Office-Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

No. 83-2064

In the Supreme Court of the United States

OCTOBER TERM, 1984

T. H. BELL, SECRETARY OF EDUCATION, PETITIONER

v.

STATE OF NEW JERSEY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217
Counsel for Petitioner

MARY ANN BURGESS
Assistant Attorney General
Richard J. Hughes Justice Complex, CN 112
Trenton, New Jersey 08625
(609) 292-8577
Counsel for Respondent

PETITION FOR WRIT OF CERTIORARI FILED JUNE 15, 1984
CERTIORARI GRANTED OCTOBER 1, 1984

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foldouts

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*The opinions of the district court and the court of appeals are printed in the appendix to the petition for writ of certiorari and have not been reproduced.

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
Case No. 80-1991

Date	FILINGS—PROCEEDINGS

1980

July 7 Petition for review of a decision of the Secretary of Education, received July 7, 1980, filed. (6cc) Service attached.

Copy of above petition served by mail on Secretary of Education.

July 15 Appearance of John J. Degnan and M. Kathleen Duncan, Esqs., for petitioner, filed.

July 21 Appearance of Philip H. Rosenfelt and Robert J. Arnot, Esqs., for respondent, filed.

Aug. 18 Certified list of the record on review, filed. (1cc—3 add'l cc rec'd 8/29/80)

Sept. 26 Consent motion by petitioner for leave to extend time to file brief and appendix to October 29, 1980, *with* Affidavit of M. Kathleen Duncan, Esq., in support of motion, filed. (4cc) Service attached.

Oct. 1 Submitted on above consent motion. Clerk

Oct. 3 Order (Clerk) granting the above consent motion and stating that no further extensions will be permitted for any reason, filed.

Nov. 3 Consent motion by petitioner for leave to file brief and appendix out of time by November 3, 1980, *with* Affidavit of M. Kathleen Duncan, Esq., in support of motion, filed, (4cc) Service attached.

Nov. 5 Submitted on above consent motion. Clerk.

Nov. 6 Order (Clerk) granting the above consent motion under the circumstances and directing that petitioner's brief and appendix are filed as of the date of this order, filed.

Nov. 6 Brief for petitioner, rec'd November 3, 1980, filed. (25cc) Certification of bar membership attached.

Date	FILINGS—PROCEEDINGS

Nov. 6 Appendix, Vols. I, II, III & IV, rec'd November 3, 1980, filed. (4cc)

Nov. 6 Affidavit of service of petitioner's brief and appendix by mail on 11/3/80, rec'd 11/3/80, filed.

Nov. 21 Consent motion by respondent for leave to extend time to file brief to January 8, 1981, filed. (4 cc) Affidavit of service attached.

Nov. 26 Submitted on above consent motion. Clerk

Dec. 2 Order *(Clerk)* granting the above consent motion and no further extensions will be permitted, filed.

1981

Jan. 7 Brief for respondent, w/service by mail on 1/7/81, filed. (25 cc)

Jan. 29 Consent Motion—O/T pet's R.B. by 2/2/81, w/service, filed.

Feb. 2 Submitted. Clerk.

Feb. 4 Order *(Clerk)* Granting pet's mot. to file R.B. o/t by 2/2/81 and no further XT will be permitted, filed.

Feb. 2 R. brief for petitioner, w/service by mail on 2/2/81, filed. (25 ccs) Cert. of bar membership attached.

May 7 Order (*Adams*, C.J.) directing 15 mins. oral argument time for each side, filed.

May 18 Argued. Coram: Adams, Rosenn & Higginbotham, C.J. (Court directed counsel to have trans. of oral argmt. prepared).

June 18 Transcript of tape of oral argument in this Ct. on 5/18/81, rec'd at direction of Court.

Oct. 13 Order (Adams, Rosenn & Higginbotham, C.J.) consolidating the petitions for review at Nos. 80-1991 & 80-2302 for disp. by the Ct., filed. (Cov. 80-1991 & 2302)

Date	FILINGS—PROCEEDINGS

Oct. 13 Opinion of the Court (Adams, *Rosenn* & Higginbotham, C.J.), w/concur by J. Higginbotham, filed. (Cov. 80-1991 & 2302)

Oct. 13 Judgment granting the petition for review; reversing the order of the U.S. Dept. of Education dated 5/7/80, appealed at No. 80-1991, & 7/16/80, appealed at No. 80-2302 and remanding the causes for vacation of the orders requiring repayment by petrs. of previously rec'd Title I funds, w/costs against resp., filed. (Cov. 80-1991 & 80-2302)

Oct. 26 Motion—XT resp's pet. for rehg for 30 days to 11/26/81, w/serv., filed. (Cov. 80-1991 & 2302)

Oct. 27 Bill of costs for petitioner, w/serv., filed.

Oct. 30 Order (Rosenn., C.J.) granting above XT mot. to file pet. for rehg. by 11/26/81, filed. (Cov. 80-1991 & 2302)

Nov. 30 Motion by respondent to file pet. for rehg. which includes a 7 pg. addendum in addition to the 15 pgs. of text, or in the alt., to strike the 7 page addendum from such pet. as filed by resp., w/serv., filed. (Cov. 80-1991 & 2302)

Dec. 7 Order (Rosenn, C.J.) granting resp's mot. for leave to file pet. for rehg. with addendum attached, filed. (Cov. 80-1991 & 2302)

Dec. 7 Petition by respondent for rehg. & suggestion for rehg. en banc, w/addendum, w/serv., filed. (25 cc) (Cov. 80-1991 & 2302)

Dec. 17 Order denying petition for rehg. for the Court en banc, filed. (cov. Nos. 80-1991 & 80-2302)

Dec. 28 Cert. judgm. issued in lieu of formal mandate. (cov. Nos. 80-1991 & 80-2302)

Date	FILINGS—PROCEEDINGS

1982

Jan. 20 Costs taxed in the amount of $359.29 in favor of petr. Commonwealth of PA added to Cert. judgm. pursuant to Rule 39(d), F.R.A.P.

Dec. 28 Certified list returned to the Secretary.

Mar. 10 Copy of letter dated 3/8/82, to Sol. General of the U.S., adv. the S.C. XT for filing cert. to 4/16/82, rec'd from C of the S.C. (Cov. 80-1991 & 80-2302)

Apr. 8 Copy of letter dtd. 4/8/82, to Sol. General of the U.S., adv. the S.C. has XT for filing cert. to 5/16/82, rec'd from C of the S.C. (Cov. 80-1991 & 80-2302)

May 21 Notice—Cert. filed 5/17/82, filed. (S.C. No. 81-2125) (Cov. 80-2302)

Oct. 7 Order—Cert. granted 10/4/82, filed. (S.C. No. 81-2125) (Cov. 80-1991 & 80-2302)

1983

Jan. 12 Certified copy of Appendices and partial proceedings in this Court forwarded to the Clerk of the S.C. pursuant to his request. (Covers 80-1991 and 80-2302)

May 11 Certified copy of all briefs filed in this Court forwarded to Clerk of S.C. pursuant to his request. (Covers 80-1991 & 80-2302)

June 2 Copy of S.C. Opinion (S.C. No. 81-2125) rec'd from Clerk of the S.C. for the information of the Court. (Covs. 80-1991 & 80-2302)

July 5 Cert. copy of S.C. judgment dated May 31, 1983, reversing, with costs, the judgment of this Court and remanding to this Court for further proceedings in conformity with the opinion of the Supreme Court, etc., filed. (Cov. 80-1991 & 80-2302)

July 20 Order on Remand From the Supreme Court of the United States (Adams, Higginbotham and *Rosenn*, Circuit Judges) Vacating this Court's judgment filed October 13, 1981. It is further ordered that the Clerk of

Date	FILINGS—PROCEEDINGS

this court reschedule for further briefing and hearing at the earliest convenience of this court the respective petitions for review filed by the States of New Jersey and Penna. In the above cases, filed. (Cov. 80-1991 and 80-2302)

July 22 Order (Seitz, Chief Judge) designating Judge Rosenn to hold conferences with counsel for the respective parties for the purpose of determining whether this matter can be settled by the parties, filed. (Cov. 80-1991 & 80-2302)

July 27 Order (Rosenn, C.J.) directing settlement conference in the above-entitled matters will be held in the chambers of Judge Rosenn, Room 20614, U.S. Courthouse, Phila., PA, on Monday, August 8, 1983 at 11:00 a.m., filed. (Cov. 80-1991 and 80-2302).

Aug. 2 Certified list refiled.

Sept. 27 Order (Clerk) directing that petitioner and respondent shall hand-file and hand-serve supplemental briefs simultaneously in photostatic, legible form no later than October 12, 1983; and that the Clerk list the case for disposition on the merits at the earliest convenience of the Court, filed.

Oct. 12 Supplemental brief for petitioner. MS 10/12/83, 10cc

Oct. 11 Supplemental brief for respondent. MS 10/11/83, 25cc

Oct. 25 Responses of respdt. to questions, recd at the direction of the Court.

Oct. 26 Letter dated 10/25/83, from Mary Ann Burgess, Esq., counsel for pet., rec'd at the direction of the Court.

Date	FILINGS—PROCEEDINGS

Oct. 20 Clerk's letter to counsel, written at the dir. of the Court, requesting cnsl. to address the following question: (1) Does the legislative history of § 101(a) of the Education Amendments of 1978 Pub. L. No. 95-561, 82 Stat. 2161-62, U.S.C. § 2732(a)(1), contain any specific indications of Congress' intent as to retroactive application of this provision?; (2) Are any data, other than the calculations in the federal auditor's report, necessary to determine the effect of a retroactive application of 20 U.S.C. § 2732(a)(1)? Answers to these questions, if poss., in written form, orig. & 3 ccs., prior to oral argmts. Otherwise, cnsl. be prepared to specify answers at oral argmt.

Oct. 19 Order (Adams, C.J.) directing 15 mins. reargmt. time for each side, filed.

Oct. 26 Reheard on remand. Coram: Adams, Hunter & Higginbotham, C.J.

Nov. 4 Letter dated November 3, 1983, from Philip S. Rosenfelt, Esquire, counsel for respondent, received at the direction of the Court, filed.

Nov. 8 Clerk's letter to counsel for petitioner requesting that they file a letter memorandum to the Sec. of Education's letter of 11/3/83, with responses no later than 11/14.

Nov. 14 Copy of ltr dtd 11/10/83 recd from Mary Ann Burgess, counsel for Aplnt, recd at direction of Ct., filed.

Dec. 25 Letter dated Nov. 23, 1983 received from counsel for Respondent, rec'd for the information of the Court.

Dec. 27 Opinion of the Court on remand from the Supreme Ct (*Adams*, Hunter & Higginbotham, C.J.'s), filed.

Dec. 27 Judgment remanding the within cause to the Secty of Education for further proceedings consistent w/the opinion of this Court., filed.

Date	FILINGS—PROCEEDINGS

1984

Jan. 4 Motion by respondent for enlargement of time within which to file a pet for rehg to and incl 2/9/84, filed.

Jan. 5. Order (*Adams*, C.J.) Granting mot by resp for enlargement of time within which to file a pet for rehg to and inl 2/9/84, filed.

Feb. 9 Petition for Rehearing of Respondent before the Court in banc, filed.

Feb. 17 Order (Seitz, Ch J, Aldisert, *Adams*, Gibbons Hunter, Weis, Garth, Higginbotham, Sloviter & Becker, C.J.'s) Denying petition for rehearing, filed.

Feb. 27 Certified judgment in lieu of formal mandate issued.

Feb. 27 Record released to the Sec.

Jun. 25 Notice of Filing petition for writ of cert., filed on June 15, 1984, filed.

Oct. 3 Certified copy of S. C. Order dated Oct. 1, 1984 granting petition for writ of certiorari, filed.

[SEAL]

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE
REGION II

26 Federal Plaza
New York, New York 10007

Audit Agency

June 20, 1975

Audit Control No. 50006-02

Dr. Fred G. Burke
Commissioner
New Jersey State Education Department
225 West State Street
Trenton, New Jersey 08625

Dear Dr. Burke:

Enclosed for your information and use is a copy of an HEW Audit Agency report titled, "Audit of Title I of the Elementary and Secondary Education Act of 1965 Administered by the State of New Jersey, Relating to Selection of Target Areas in Newark, New Jersey, for the period September 1, 1970, to August 31, 1973." Your attention is invited to the audit findings and recommendations contained in the report.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), HEW Audit Agency reports issued to the Department's grantees and contractors are made available, if requested, to members of the press and general public.

To facilitate identification, please refer to the above audit control number in all correspondence relating to this report.

Sincerely yours,

/s/ Bernard Luger
Regional Audit Director
HEW Audit Agency

Enclosure

Direct Reply To:

Deputy Commissioner
Bureau of School Systems
Office of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Audit Control No. 50006-02

REPORT OF AUDIT
TITLE I OF THE
ELEMENTARY AND SECONDARY EDUCATION
ACT OF 1965
Administered by the
STATE OF NEW JERSEY

Relating to Selection of Target Areas
in Newark, New Jersey

For the Period
September 1, 1970, to August 31, 1973

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REPORT OF AUDIT
TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965
Administered by the STATE OF NEW JERSEY

Relating to Selection of Target Areas in Newark, New Jersey

For the Period September 1, 1970, to August 31, 1973

INTRODUCTION

Background

Title I of the Elementary and Secondary Education Act of 1965 (Public Law 89-10), as amended, authorizes Federal support to local educational agencies for special educational programs for educationally deprived children in attendance areas where low-income families are concentrated. Federal funds are allotted to State educational agencies who, in turn, sub-allot the funds to eligible local educational agencies.

To participate in the Title I program, school attendance areas must meet specific eligibility criteria which are stated in Title 45, Part 116, of the Code of Federal Regulations (CFR). These regulations which implement the Act stipulate that to be eligible an attendance area must have a high concentration of children from low-income families, expressed either in percentages or numbers, equal to or greater than the district average.

Our previous audit report on the State's administration of the Title I program, Audit Control Number 90067-02, issued March 31, 1969, covered the period September 28, 1965 to August 31, 1967. In recognition of the amendments to the Act, specifically Section 106, Statute of Limitations, in Public Law 93-380 (enacted August 21, 1974)

and our interest in administrative controls in recent years, we have confined our audit coverage in this report to the period September 1, 1970 to August 31, 1973.

During this period, ESEA Title I funds allotted to the New Jersey State Department of Education (SDE) aggregated $156,166,574. The funds sub-allotted to the Newark Board of Education during this period totalled $28,709,198, about 18.4 percent of the allotments to the State. For school year 1973-74, program funds amounting to $61.5 million were allotted to the State of which the Newark Board of Education received $11.2 million.

During the 1972-73 school year, Title I funds were used by the City to support reading, mathematics, and bilingual programs in which 25,996 children participated. The number of participants represented approximately 32 percent of the total pupil enrollment of about 80,000 children as of September 30, 1972 in levels ranging from kindergarten through grade 12.

Scope of Audit

Our audit was made in accordance with standards for governmental auditing. The principal objective was to determine the propriety and efficacy of the methods used by the Newark Board of Education, and approved by SDE, to select eligible school attendance areas. In this review, we examined project applications submitted for approval by Newark to SDE and any related documentary support for the school years 1970-71 through 1972-73.

HIGHLIGHTS OF AUDIT RESULTS

Our audit showed that the Newark Board of Education (BOE) used Title I funds totalling over $1.1 million in school years 1970-71 and 1971-72 in schools which did not meet the eligibility requirements of the Title I regulations. Essential source data in support of the 1970-71 eligibility determinations was not available. However, at least one school, based on the low-income percentages

shown on the application, was improperly classified as eligible to receive Title I funds. In 1971-72, by using incorrect ratios (resulting in part from incomplete low-income statistics) BOE misclassified 13 schools as eligible to receive Title I services.

More critical analysis by the State agency and BOE of the Title I applications for these years would have disclosed the need to validate the eligibility determinations and would have prevented the improper use of program funds. Although various conditions noted in these years did not recur and the City's eligibility determinations for school year 1972-73 were properly made, there was no documentary evidence from which we could determine whether these improvements stemmed directly from critical reviews by the State agency. (See Other Matters section of report, page [34.]

FINDINGS AND RECOMMENDATIONS

Selection of Target Areas

The Newark Board of Education (BOE) used Title I funds totalling over $1.1 million in school years 1970-71 and 1971-72 in schools which did not meet the eligibility requirements of the Title I regulations.[1] A critical review of the project applications for these years by BOE and State agency officials would have disclosed information gaps and a lack of detail on the methods used to determine eligibility of school attendance areas. Essential source data in support of the 1970-71 eligibility determinations was not available. However, at least one school, based on the low-income percentage shown in the application, was improperly classified as eligible for Title I support. In 1971-72, by using incorrect ratios (stemming in part from incomplete low-income statistics) BOE misclassified 13 schools as eligible to receive Title I serv-

[1] Title 45, Part 116, of the Code of Federal Regulations (CFR).

ices. In both years the ineligible schools were designated as project areas and used Title I funds. Eligibility determinations were properly made by BOE in school year 1972-73.

Provisions of Section 116.17, as amended November 28, 1968, set forth specific criteria as standards to determine the eligibility of school attendance areas to receive grant funds under the Title I program. Correct application of these criteria is the first step in the process to upgrade the education of educationally deprived children. The attendance areas which meet the eligibility requirements may or may not be included in Title I projects (and project areas) dependent on the number of educationally deprived children residing in these areas and their educational needs.

In citing the tenets to be observed in this process, the regulations mandated that Title I projects be established in attendance areas which have high concentrations of children from low-income families. Further elaborating on this basic requirement for attendance area eligibility, Section 116.17(d) stipulated that a school attendance area may be designated a project area ". . . if the estimated percentage of children from low-income families residing in that attendance area is as high as the percentage of such children residing in the whole of the school district. . . ." This section also cited an alternative but analogous provision under which the designation may be made ". . . if the estimated number of children from low-income families residing in that attendance area is as large as the average number of such children residing in the several school attendance areas in the school district." The regulations permitted an entire school district to be designated as a project area but only if there were slight differences in concentration of children from low-income families. Basically, these criteria have remained unchanged in successive revisions to the regulations.

In a separate directive (ESEA Title I Program Guide No. 44) to Chief State School Officers issued March 18, 1968, the Office of Education again placed special stress on the regulatory criteria for determining the eligibility of school attendance areas to participate in Title I projects. Section 1.1 of this directive defined an attendance area for the purposes of Title I as an area served by a public school and further stipulated: "For each such attendance area data must be secured on (a) the total number of children who according to their ages are eligible to attend the public school serving that area and (b) the number of such children who are from low-income families." Section 1.1 further defined the criterion for eligibility as follows: "In all cases the number of children considered eligible to attend a particular school consists of all children of the appropriate ages including children attending private schools and children who have dropped out of school."

The program guide suggested various income data sources as guidelines for arriving at attendance area eligibility determinations. It placed primary importance on two sources to ascertain the actual or estimated number of children from low-income families—the number of children in families receiving Aid to Families with Dependent Children or the children receiving free lunches. Housing, health, or employment statistics were also to be considered. The attendance areas were then to be ranked according to the percentage of children from low-income families or to the average number of such children unless there were no wide variations in the population sizes in the various attendance units. The directive also underscored a basic injunction: "Whatever data are used must be used uniformly throughout an applicant's district." In its Title I application for school year 1970-71, the City stated that it had considered eight sources of data, identified as criteria, in its determination of attendance area eligibility. Among these criteria, as enumerated in

paragraph 1.2 of Section II A of the application were the following:

"1.2.1 Statistics on Aid for Dependent Children supplied by the Essex County Welfare Board.

1.2.2 Free lunch and free breakfast programs

1.2.3 Model Cities statistics

1.2.4 Housing statistics"

However, the City did not retain this source data nor have available for our review an analysis of these statistics and information showing the weight given to each criterion in arriving at the determinations of attendance area eligibility. In the absence of this essential substantiation, we could not confirm the reliability of the district-wide percentage of low-income children, stated in the application as 25.5 percent, nor validate the low-income percentage computed for each attendance area. Therefore, we could not determine whether all 74 schools listed in the Title I application, involving 22,848 program participants, were actually eligible for Title I funds. But among the schools included in the application was one (Lafayette Street School) which showed a low-income percentage of 23.5, two full points below the district-wide average of 25.5. Since this school did not meet the prescribed low-income eligibility criteria, its eligibility designation was patently erroneous and its use of Title I funds was improper. For school year 1970-71 Title I funds used by this school totalled $91,266. Our further examination of Title I expenditures for school year 1970-71 showed that 10 additional schools, excluded from the application and therefore ineligible to receive Title I services, had used program funds Totalling $41,021.[1] This condition was not found in other years

[1] These schools included the following: West Kinney Street Junior High, Alexander Street, Ann Street, Chancellor Avenue, Cleveland, Garfield, Mount Vernon, Arts High School, Springfield Avenue, and Maple Avenue.

covered by our review. Responsible BOE officials agreed that these expenditures were improper but could not explain how they had avoided detection.

In determining the eligibility of attendance areas for school year 1971-72 BOE stated in the Title I application that it had considered eight sources of data (similar to those used in the prior year), but had settled on using one source, the statistics on Aid for Dependent Children (ADC) supplied by the Essex County Welfare Board. By using this source, BOE arrived at a district-wide low-income ratio of 33.9 percent. In comparison to the 74 selected attendance areas and 22,848 program participants in school year 1970-71, the application for 1971-72 indicated that the number of selected attendance areas and participating children had increased to 76 and 23,864, respectively.

We found that the method used by BOE to determine the eligibility of attendance areas for school year 1971-72 deviated from the specific instructions stated in Section 1.1 of Program Guide No. 44. As indicated earlier in this report, the determination of attendance area eligibility is dependent on the relationship between (a) the total number of children eligible to attend the public school serving the attendance area, including those attending private schools and those who had dropped out of school and (b) the number of such children from low-income families. This can be expressed in a ratio, as follows:

Ratio A

$$\frac{\text{Total Number of Children from Low-Income Families in School Attendance Area (Col. 3)}^{1}}{\text{Total Number of Children Considered Eligible to Attend a Particular School (Col. 2)}^{1}} = \text{Percentage of Children from Low-Income Families (Col. 4)}^{1}$$

[1] The columnar references correspond to the application format for school year 1971-72 established by the Office of Education.

BOE used this ratio to compute the district-wide low-income relationship of 33.9 percent (32,352 ADC children divided by the total school age children population of 95,780). However, in computing the individual attendance area low-income percentages BOE applied other ratios which did not show a direct correlation between the entire eligible school population in the school attendance area and that segment of the population representing children from low-income families. Contributing to this disparity was incomplete information in the ADC statistics on the number of low-income children in the individual school attendance areas.

The ADC statistics furnished by the Essex County Welfare Board listed the total number of children in the ADC category enrolled at each regular public elementary and secondary school. However, the statistics were incomplete since they excluded those children on ADC rolls attending private and special education schools [1] or who had dropped out of school. The limitations of the statistics therefore suggested to the IEA the use of an alternative ratio permitted in Program Guide No. 44 under certain conditions.

The program guide recognized that in some instances (as did not exist in Newark) schools may not have ". . . well-defined attendance area boundaries or receive numbers of children from outside the areas that have been designed for those schools. . . ." In these cases, it may be necessary to use a different ratio, to base the ranking of the attendance areas for such schools on the ". . . . percentage or number of children from low-income families actually enrolled in those schools. . . ." This ratio under these circumstances is stated as shown below:

[1] Established for children with special handicaps, e.g. emotionally disturbed, mentally retarded but educable, deaf, etc.

Ratio B

$$\frac{\text{Total Number of Children from Low-Income Families Enrolled in a Specified School}}{\text{Total Enrollment in Specific School}} = \text{Percentage of Children from Low-Income Families}$$

As previously indicated, Ratio B was not applicable to Newark since the City had well-defined attendance areas. BOE nevertheless attempted to use it because the incompleteness of the ADC statistics left no other reasonable approach. While the ratio was not permitted to be used by BOE under Program Guide No. 44 criteria, it was a reasonable alternative under the circumstances. However, in its attempt BOE devised hybrid ratios which deviated from the method specified in the program guide. The results were unacceptable since there was no direct relationships between the component elements.

For each public elementary school, BOE included in the numerator [1] the number of ADC children enrolled in that school as well as the total number of ADC children residing in the school attendance area who were enrolled in junior and senior high schools. However, BOE limited the data in the denominator [2] to the total enrollment of the elementary school. There was therefore no meaningful relationship between the data shown in the ratio, namely the total ADC statistics for the attendance area and the elementary school enrollment. Lacking this correlation, the ratio had basic mathematical flaws which tended to inflate the low-income percentage for individual elementary school areas and thus to increase improperly the number of eligible attendance areas. The distortion is illustrated in the calculation of the low-income percentage for Madison Street School:

[1] Column 3 in application format for school year 1971-72 captioned: All Schools in the District Ranked by Percentage of Children from Low-Income Families.

[2] Column 2 in application format described in note [1].

No. of ADC children enrolled in Madison Street School in statistics furnished by the Essex County Welfare Board	445 (A)
No. of ADC children residing in Madison Street School attendance area enrolled in junior and senior high schools	380 (B)
No. of ADC children residing in Madison Street School attendance area enrolled in other schools, e.g. schools for the handicapped	112 (C)
Total No. of low-income children shown in application	937 (D)
Total pupil enrollment in Madison Street School	1544 (E)

Calculation of low-income percentage:

$$\frac{\text{No. of low-income children shown in application (937)}}{\text{Total pupil enrollment in Madison Street School (1544)}} = 60.6\%$$

The limitations of the available data prevented us from recalculating the low-income percentages for individual elementary school areas in accordance with the criteria mandated by OE. Therefore, in our recalculations we followed the reasonable alternative offered in Ratio B. As shown below, we considered only related data, as stated in Ratio B, namely the number of ADC children enrolled in Madison Street School (Item A) and the total pupil enrollment at the school (Item E). This recalculation (445÷1544) showed that the actual low-income ratio for Madison Street School was 28.8 percent, substantially below the district-wide average of 33.9 In recalculating the ratios of the 41 elementary schools presented as eligible in the Title I application we found that 10 schools had low-income ratios lower than the district-wide average and were thus ineligible for Title I funding. Data pertaining to these 10 schools is shown in the following tabulation.

Computation of Low-income Percentages for 10 Elementary Schools (Chart A)

School	Total Number of Low-income Children: Shown in Application	Total Number of Low-income Children: Enrolled at School	Total Number of Children Enrolled at School	Low-income Percentages: Shown in Application Col B ÷ Col D	Low-income Percentages: Computed Auditor Col C ÷ Col E
(Col A)	(Col B)	(Col C)	(Col D)	(Col E)	(Col F)
Madison	937	445	1544	60.6	28.8
Newton St.	446	256	812	54.9	31.5
So. 17th St.	823	519	1549	53.1	33.5
Central Ave.	314	174	592	53.0	29.4
Burnet St.	388	231	766	50.6	30.2
Waverly Ave.	299	191	599	49.9	31.9
Franklin	519	361	1115	46.5	32.4
M. Garvey	603	298	1304	46.2	22.9
Garfield	427	253	1229	34.7	20.6
Hawkins	414	361	1192	34.7	30.3

BOE used a different method to compute the low-income percentages for junior and senior high schools. In this second method to determine the eligibility of secondary schools, BOE added the low-income percentages of the pipeline or feeder elementary schools shown in the Title I application and arrived at an average, as illustrated below for Weequahic High School:

Feeder Elementary School	Low-income Percentage Shown in Application [1]
Bragaw Avenue School	48.4%
Chancellor Avenue School	20.5 [2]
Hawthorne Avenue School	44.0
Maple Avenue School	25.7 [2]
Peshine Avenue School	49.1
Total of low-income percentages	187.7%
Average low-income percentage 187.7% ÷ 5 =	37.5%

[1] Based on our use of Ratio B, the individual feeder elementary school percentages were recomputed respectively as 39.8%, 11.9%, 17.2%, and 40.5%.

[2] These schools had low-income percentages below the district-wide average of 33.9% and were therefore ineligible for I funding

Since the low-income percentages for these individual elementary schools were inflated as described earlier in this report, the resultant averages based on these percentages were similarly inflated.

The method was improper not only because it produced low-income percentage distortions but also because it was not authorized by the attendance area eligibility criteria discussed earlier in this report. Further, it was inconsistent with the method used to determine the eligibility of elementary schools. The use of dual approaches (population totals for elementary schools and averaged percentages for secondary schools) is specifically prohibited by the injunction in Program Guide No. 44 that data in attendance area eligibility determinations ". . . be used uniformly throughout an applicant's district."

In our recomputations of the low-income percentage for the 10 junior and senior high schools shown as eligible in the Title I application we used the same related information (Ratio B) that we had employed in our elementary school calculations i.e., the number of ADC children at each school and the total school enrollment. We found, as shown in the following tabulation, that three of these schools had low-income percentages below the district-wide average of 33.9 percent and therefore were not eligible to use Title I funds.

Computation of low-income Percentages for 3 Secondary Schools (Chart B)

School	Total Number of low-income Children Enrolled at School	Total Number of Children Enrolled at School	Low-income Percentage	
			Shown in Application	Computed by Auditor Col B ÷ Col C
(Col A)	(Col B)	(Col C)	(Col D)	Col E)
Clinton Pl. Jr. H.S.	491	1529	69.5	32.1
Weequahic H.S.	690	2470	37.5	27.9
East Side H.S.	264	2023	35.0	13.0

Since the schools listed in charts A and B did not meet the eligibility requirements of the Title I criteria, they were not authorized to receive grant funds under the Title I program. Title I expenditures made by these schools for school year 1971-72, totalling $1,029,630, were unallowable. The expenditures applicable to each school, rounded off to the nearest dollar, are summarized in the following chart.

Expenditures by Ineligible Schools for School Year 1971-72 (Chart C)

School	Expenditures		
	Salaries	Other Expenses	Total
Madison	$ 92,225	$ 11,525	$ 103,750
Newton Street	63,419	6,044	69,463
So. 17th Street	91,154	13,688	104,842
Central Avenue	56,225	5,307	61,532
Burnet Street	50,128	5,879	56,007
Waverly Avenue	51,651	5,014	56,665
Franklin	107,522	7,705	115,227
Marcus Garvey	102,438	17,049	119,487
Garfield	70,104	11,872	81,976
Hawkins	89,057	13,746	102,803
Clinton Pl. Jr. High	45,407	12,807	58,214
Weequahic High	40,402	12,882	53,284
East Side High	33,498	12,882	46,380
Total Unallowable Expenditures	$893,230	$136,400	$1,029,630

To recapitulate, the city's claims for school years 1970-71 and 1971-72 included unallowable expenditures of at least $1,161,917, as summarized below:

School Year 1970-71		
Expenditures by ineligible school (Lafayette) shown as eligible in application	$91,266	
Expenditures by 10 ineligible schools excluded from application	41,021	
Total unallowable expenditures		$ 132,287
School Year 1971-72		
Total unallowable expenditures-Chart C		1,029,630
Total unallowable expenditures 1970-71 and 1971-72		$1,161,917

During the audit we alerted the City to the impropriety of the ratios used to determine attendance area eligibility and sought an explanation for their usage. BOE's Central Office Coordinator for the Title I program agreed that the ratios used were incorrect and tended to inflate the low-income percentages. He ascribed the incorrect method to the lack of mathematical expertise of the individual responsible for preparing that part of the application. Further, he believed that this employee misconceived the criteria stated in Program Guide No. 44.

We found that the low-income percentages computed for school year 1972-73 were proper and were based on more precise information. The Essex County Welfare Board had furnished BOE with a list showing the name and address of each child, age 5-17, in the ADC category. BOE converted this data into attendance area statistics. Thus, BOE had available for the first time statistics indicating the total number of children from low-income families residing in the school attendance area, inclusive of drop-outs and attendees at public, non-public and special education schools.

There was no documentary evidence from which we could determine whether this improvement in the quality of the City's low-income information and the non-recurrence in succeeding years of various conditions in 1970-71 and 1971-72, discussed earlier in this report, resulted from critical reviews by the State educational agency (New Jersey State Department of Education—SDE). A thorough review of the 1970-71 application by SDE would have disclosed the ineligibility of Lafayette Street School to receive Title I program funds. Further, the City's use of eight sources of information in 1970-71 to determine the number of children from low-income families should have prompted SDE to request a written analysis showing how these various data sources had been used in arriving at the district-wide and individual attendance area low-income percentages.

Similarly, close review of the following year's application (1971-72) by SDE would have detected major gaps in the information relating to the selection of project area schools and triggered a request to the City to resolve the questions raised by SDE prior to application approval. For example, the application includes a brief description of the method used to determine the eligibility of secondary schools but offers no similar commentary on elementary schools. The omission is significant since the calculation for secondary schools involved averaging the low-income percentages of feeder elementary schools, as previously discussed in this report. If SDE had requested a description and an illustration of the method used in arriving at the elementary school percentages, SDE would have detected the basic flaws in the method and would have averted the improper use of over $1 million of Title I funds for the 13 elementary and secondary schools, as shown in Charts A, B and C. Further, if the methodology supporting the secondary school computations had been requested by SDE, the State would have learned, as previously illustrated by us, that the computations included ineligible as well as eligible elementary schools.

Another significant information gap pertained to the rationale for selection of the low-income information source used by BOE in arriving at its eligibility determinations. BOE stated in the application that it had considered eight sources of information before selecting the ADC statistics supplied by the Essex County Welfare Board. Among these low-income data sources were separate statistics relating to housing, Model Cities, free lunch and free breakfast, health, etc. The number of children from low-income families determined by these statistics was shown for only three sources: housing (33,011); free lunch and free breakfast (32,865); and ADC (32,352). Except for stating that these various sources had been considered, BOE did not set forth the criteria it had used in its consideration nor the rationale

for selection of the ADC data. SDE should have requested this information to make certain that the most appropriate data had been used. System weaknesses disclosed in these replies would have suggested to SDE the need for a special on-site audit to confirm the accuracy of reported data and to recommend system improvements.

Recommendations

We recommend that:

1. Arrangements be made to return to the Office of Education those Federal funds, totalling $1,161,917, which were used by ineligible school attendance areas in school years 1970-71 and 1971-72.

2. Steps be taken to develop and implement controls to prevent improper uses of ESEA Title I funds in the future. These controls should prescribe a comprehensive review by responsible officials of the data sources and methods used to determine attendance area eligibility. Where significant discrepancies or patterns of system weaknesses are disclosed in these reviews, special on site examinations should be made to confirm the accuracy of the data and the propriety of the methods.

The State Agency Comments

The State agency's reply to this finding indicated nonconcurrence in our conclusions and recommendations. In support of its narrative comments, the State agency (State Department of Education—SDE) submitted various exhibits which we have marked for ease of reference as Exhibits A to E. We are setting forth verbatim, as follows, SDE's comments on each audit exception category. SDE's complete reply inclusive of the related exhibits is incorporated in this report (page [35] under Appendix A.

"Lafayette Street School

The Draft Audit Report states that Lafayette Street School was ineligible for Title I funds for the school year 1970-71 because its concentration of children from low income families (23.5%) was below the districtwide average (25.5%). Upon reexamination, we find that the low income percentage for Lafayette School was incorrectly stated in the 1970-71 application. The percent should have been stated as 41.4%. Enclosed in support is data from the 1970 census report.

"Expenditures for Non-Title I Schools

Our review of the Newark expenditures for 1970-71 does not indicate that Title I funds were allocated to non-Title I schools. I have enclosed for your examination a section of the fiscal year 1971 audit report for Newark. As you will note, the report indicates (item 2) that allocations were made only against approved projects. I have also included for your review the Title I Budget Distribution for 1970-71 which indicates that funds were not scheduled for any of the schools in question.

"Non-Eligibility of 10 schools listed in the 1971-72 Title I Application.

Your report indicated that auditors recalculated the eligibility of ten schools and found them to be below districtwide low income average. It is clear from the information included that only AFDC data was used in the recalculation. The Newark application specifically indicated that a number of data sources, in addition to AFDC, were used. They were Housing Statistics, Model Cities Statistics, Free Lunch and Breakfast Statistics, Incidents of Foreign Born and Non-English Speaking Students, Health Statistics, Unemployment and Underemployed Sta-

tistics. Page 4b of that application is included for your review.

We concur that there were 445 children identified as AFDC in the Madison Attendance area. These were but a portion of the total low income population which is more accurately reflected by the average daily free lunch attendance (919) for the Madison School. I have included free lunch data for the Madison School.

The situation referred to above applies to the cited secondary schools, also. Although Clinton Place Junior High School identified only 491 students from AFDC data, these children were a part of a total of 1,032 low income children residing in the attendance area. I have again attached free lunch data. It is our contention that if auditors had considered data other than AFDC, they would have determined that each of the 10 schools cited was eligible as listed.

Department Staff has undertaken to provide accurate responses to what we consider serious allegations. In each case, schools of the district in question have been visited. It is our conclusion that poverty during the period in question was so widespread that there were a few schools truly ineligible. The district did attempt to follow regulations in the development and provision of services. In the process they may not have been as definitive as some of us would require. Nevertheless, I am assured that their actions were consistent with the applicable laws and regulations."

Our comments on the SDE position, keyed to the above headings, are presented below:

Lafayette Street School

SDE's comments indicate that careful examination of all data sources used in the determination of attendance area eligibility would have disclosed that the low-income percentage for Lafayette Street School was incorrectly stated. In support of this statement SDE submitted ". . . data from the 1970 census report . . . ." The SDE position is not valid since the 1970 census data report was not one of the eight sources identified in the application as those used to determine attendance area eligibility.

In its Title I application for school year 1970-71, BOE stated that it had determined attendance area eligibility ". . . on the basis of the best available information . . . ." BOE had pointed out in a special note in the application that the 1970 census data was not then available. Accordingly, SDE's comment that the low-income percentage for Lafayette Street School, as supported by the 1970 census data, should have been stated as 41.4 is not valid.

If this comment infers that the later availability of the 1970 census data showed the need to recalculate the low-income percentage for Lafayette, the requirement would also have been applicable to *all other* schools and would have produced a revised district-wide average. The City would have had to submit an amended application to SDE, showing the revised calculations and identifying the information sources which had been used. Since an amended application was not submitted to SDE for approval, the data shown in the original application must have been considered valid.

Expenditures for Non-Title I Schools

We agree with the statements by SDE that Title I funds ". . . were not scheduled for any of the schools in question . . . ." Exhibit C, showing the planned budget distribution for school year 1970-71, omits these schools. Our finding did not state that these schools were im-

properly included in the budget. Rather, it pointed out that these schools used Title I funds even though they had been excluded from the application and were therefore ineligible to receive Title I services.

Our analysis of expenditures showed that Title I funds had in fact been expended at these schools. This was authenticated by our comparison of financial data as shown in BOE's Budget Status Report which listed these school expenditures and as shown in the final project expenditures report submitted to SDE. The comparison follows:

	Totals Shown in		
	Budget Status Report	Report of Expenditures	Difference
Approved Project Amount	$9,046,097	$9,046,097	$ —0—
Total Funds Expended	$8,105,308	$8,105,308	$ —0—
Total Funds Committed *	312,330	312,330	—0—
Total Funds Expended and Committed	$8,417,638	$8,417,638	$ —0—
Total Carry-Over to Fiscal Year 1972	$ 628,459	$ 628,459	$ —0—

* Committed funds represent encumbrances

The City presented expenditures and encumbrances in the Budget Status Report in two breakouts: by line item; and by object code, e.g., salaries, textbooks, etc. for each school. Line item totals shown in the annual Report of Expenditures (ESEA Forms 1 and 2) to SDE were derived from the Budget Status Report. Since the reports were in agreement, it is apparent that the expenditures for the 10 ineligible schools, as shown in the Budget Status Report, were also included by line item in the annual Report of Expenditures.

Our analysis of the Budget Status Report indicated that Title I funds used by these 10 schools, included in the expenditures total shown above, were expended for salaries ($40,950) and other costs ($71).

Non-Eligibility of 10 Schools Listed in the 1971-72 Title I Application

We do not agree with the SDE position that our calculations of attendance area eligibility are invalid because they were based on AFDC statistics. SDE's exception is based on the grounds that we had not considered various other sources of data which the City had carefully examined and had used, in addition to the AFDC statistics, in arriving at its eligibility determinations. In support of its statement that these various sources had been used and their use specifically indicated in the application, SDE submitted with its reply page 4b of the application. The statements on this attachment (Exhibit D) contradict the position advanced by SDE.

The part of the application submitted by SDE is particularly important since in it the City states the method used in selecting attendance areas for Title I projects. As previously discussed in the finding, the City clearly certified in this part of the application that after examination of eight sources of data it had settled on one. Page 4b of the application stated the decision as follows: "The criterion used in qualifying schools was based on statistics on Aid for Dependent Children supplied by the Essex County Welfare Board." The seven data sources which had been examined but *not* selected for use in determining attendance area eligibility included, as shown on page 4b, housing statistics, free lunch and free breakfast statistics, and other low-income indicators.

As demonstrated in the finding, in the illustration for Madison Street School and in the various computations shown under Chart A, BOE based its low-income percentages exclusively on AFDC data. We had no valid basis to use for our audit determinations on information criterion other than the one selected by the City and approved by SDE. Our audit finding was not concerned so much with the data source selected for use as with the way the data was used. In this context, the SDE reply

did not comment on the basic flaw in BOE's eligibility determinations described in the audit report, namely the use of mathematically unacceptable ratios for computing low-income eligibility.

SDE's statement that ". . . there were 445 children identified as AFDC in the Madison attendance area . . ." misreads the data presented in the illustrative computation for Madison Street School. The basic mathematical flaws in the ratio used by BOE, as shown in our illustrative recomputation for Madison Street School, warranted recognition by SDE. As shown in the audit report, these 445 children represented only those AFDC children attending Madison Street School and did not include other AFDC children in the Madison Street School attendance area who according to their ages were eligible to attend the school but were enrolled in other schools, e.g. schools for the handicapped.

We do not question SDE's assertion that during the period covered by our audit poverty was widespread in the district. This incidence of poverty therefore necessitated closer attention to the calculation of low-income percentages to insure use of Title I funds in eligible low-income attendance areas with the greatest concentrations of educationally disadvantaged children.

OTHER MATTERS

During the discussion of audit results at the exit conference, the Commissioner of Education notified us that the State agency's application review procedures relating to selection of target areas had been strengthened after the period covered by our audit. As substantiation, he later forwarded to us, for our review, copies of the State agency's Guidelines for Approval of ESEA Title I Program Application for fiscal years 1974 and 1975, respectively. We found these documents to be generally similar to those issued in earlier years and without clear evidence that the quality of the State agency review had improved.

APPENDIX A

[SEAL]

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
225 West State Street
Trenton, N.J.

Office of the Commissioner

December 10, 1974

Mr. Bernard Luger
Regional Audit Director
Department of Health, Education
and Welfare
26 Federal Plaza
New York, New York 10007

Dear Mr. Luger:

This acknowledges receipt of the HEW Audit Report of Title I ESEA for the period September 1, 1970 to August 31, 1973.

For purposes of response I have grouped audit exceptions by fiscal year, categories as indicated in your report, audit exception amounts and page numbers. They are:

Fiscal Year 1971—Lafayette Street School ($91,266) page 7.

Fiscal Year 1971—EXPENDITURES FOR NON TITLE I SCHOOLS ($41,021) page 8

Fiscal Year 1972—Non eligibility of 10 schools listed in 1971-1972 application ($1,029,630) pages 9-18

Lafayette Street School

The Draft Audit Report states that Lafayette Street School was ineligible for Title I funds for the school year 1970-71 because its concentration of children from low

income families (23.5%) was below the districtwide average (25.5%). Upon reexamination, we find that the low income percentage for Lafayette School was incorrectly stated in the 1970-71 application. The percent should have been stated as 41.4%. Enclosed in support is data from the 1970 census report. (Exhibit A)[1]

Expenditures for Non-Title I Schools

Our review of the Newark expenditures for 1970-71 does not indicate that Title I funds were allocated to non-Title I schools. I have enclosed for your examination a section of the fiscal year 1971 audit report for Newark. As you will note, the report indicates (item 2) that allocations were made only against approved projects. I have also included for your review the Title I Budget Distribution for 1970-71 which indicates that funds were not scheduled for any of the schools in question. (Exhibits B and C)[1]

Non-Eligibility of 10 schools listed in the 1971-72 Title I Application.

Your report indicated that auditors recalculated the eligibility of ten schools and found them to be below districtwide low income average. It is clear from the information included that only AFDC data was used in the recalculation. The Newark application specifically indicated that a number of data sources, in addition to AFDC, were used. They were Housing Statistics, Model Cities Statistics, Free Lunch and Breakfast Statistics, Incidents of Foreign Born and Non-English Speaking Students, Health Statistics, Unemployment and Underemployed Statistics. Page 45 of that application is included for your review. (Exhibit D)[1]

We concur that there were 445 children identified as AFDC in the Madison attendance area. These were but

[1] Exhibit identification shown by HEW Audit Agency to facilitate reference.

a portion of the total low income population which is more accurately reflected by the average daily free lunch attendance (919) for the Madison School. I have included free lunch data for the Madison School. (Exhibit E)[1]

The situation referred to above applies to the cited secondary schools, also. Although Clinton Place Junior High School identified only 491 students from AFDC data, these children were a part of a total of 1,032 low income children residing in the attendance area. I have again attached free lunch data. It is our contention that if auditors had considered data other than AFDC, they would have determined that each of the 10 schools cited was eligible as listed.

Department Staff has undertaken to provide accurate responses to what we consider serious allegations. In each case, schools of the district in question have been visited. It is our conclusion that poverty during the period in question was so widespread that there were a few schools truly ineligible. The district did attempt to follow regulations in the development and provision of services. In the process they may not have been as definitive as some of us would require. Nevertheless, I am assured that their actions were consistent with the applicable laws and regulations.

Sincerely yours,

/s/ Fred G. Burke
FRED G. BURKE
Commissioner of Education

EDITOR'S NOTE

PAGES 38 thru 50 WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

EXHIBIT 67

A. ESTIMATED NUMBER OF ELEMENTARY SCHOOL-AGE CHILDREN (5-13)
B. ESTIMATED NUMBER OF DISADVANTAGED ELEMENTARY SCHOOL-AGE CHILDREN (5-13)
C. PERCENTAGE OF ELEMENTARY SCHOOL-AGE CHILDREN (5-13) WHO ARE DISADVANTAGED
D. SCHOOL RANK - NUMBER OF DISADVANTAGED CHILDREN
E. SCHOOL RANK - PERCENTAGE OF DISADVANTAGED CHILDREN
F. TOTAL NUMBER OF NON-WHITE ELEMENTARY SCHOOL-AGE CHILDREN (5-13)
G. TOTAL NUMBER OF PRE-SCHOOL AGE CHILDREN (UNDER 5)
H. TOTAL NUMBER OF SCHOOL-AGE CHILDREN (5-17)
I. SCHOOL DRAIN INDEX (G/B)
J. TOTAL ATTENDANCE AREA POPULATION
K. NON-WHITE PERCENTAGE OF TOTAL POPULATION
L. AVERAGE NUMBER OF PERSONS PER HOUSEHOLD
M. PERCENTAGE OF CHILDREN UNDER 18 NOT LIVING WITH MALE PARENT

	SCHOOL NAME	A	B	C	D	E	F	G	H	I	J	K	L	M
11	ABINGTON AVE	962	390	40.5	31	23	225	532	1436	0.4	7742	16.5	2.43	27
101	BROADWAY-BROADWAY JR	1649	600	40.5	12	21	1123	903	2276	0.4	6920	60.9	3.52	38
111	BURNET STREET	1527	746	48.9	6	6	931	922	2065	0.4	8291	50.6	2.65	40
121	CAMDEN ST-WEST KINNEY JR	1236	502	40.4	17	15	1133	713	1655	0.4	4642	92.7	3.75	46
131	CENTRAL AVE	913	445	48.2	25	7	625	439	1345	0.3	3787	66.0	3.64	34
141	CHANCELLOR AVE	2030	356	17.5	37	45	1600	1123	2728	0.4	10445	81.8	3.31	24
151	CHARLTON STREET	625	288	45.8	42	15	600	364	855	0.4	3407	95.7	2.67	41
171	CHRISTOPHER COLUMBUS	925	163	17.6	48	44	124	569	1332	0.4	7171	9.1	2.91	13
181	CLEVELAND-WEST KINNEY JR	1206	616	43.6	14	9	1237	723	1749	0.4	4334	97.8	3.44	54
21	ALEXANDER STREET	1232	182	14.8	45	47	96	605	1307	0.3	8763	5.8	3.34	13
201	BAYLOR STREET	1352	760	56.4	6	3	867	695	1848	0.4	7031	52.4	2.56	34
211	EIGHTEENTH AVE-WEST KINNEY JR	256	140	54.6	49	2	253	116	342	0.3	997	97.5	3.22	52
221	ELLIOTT ST-BROADWAY JR	1456	322	22.4	39	42	155	806	2047	0.4	9928	11.4	2.73	20
231	FIFTEENTH AVE-SOUTH 7TH ST	1406	459	32.6	23	23	1255	899	1843	0.5	5421	90.8	3.79	52
241	FOURTEENTH AVE	719	299	41.6	41	18	637	423	951	0.4	2690	88.3	3.78	49
251	FRANKLIN-WEBSTER JR	2090	779	37.3	7	25	623	1336	2945	0.5	12273	24.0	3.10	29.
261	GARFIELD	1506	302	24.0	35	39	665	941	2183	0.4	9614	30.1	2.99	26.
271	TUBMAN-GARVEY	1269	468	36.5	20	23	1179	742	1632	0.4	4832	92.3	3.81	47.
281	HAWKINS ST	1552	734	47.3	9	12	505	786	2157	0.4	7254	25.1	3.30	26.
291	HAWTHORNE AVE	1760	374	21.3	33	43	1655	943	2401	0.4	8136	92.9	3.66	37.
31	ANN STREET	1428	439	30.7	26	33	16	736	2144	0.3	10341	0.9	3.11	7.
301	LAFAYETTE STREET	1372	572	41.6	16	19	185	748	2042	0.4	9423	10.8	3.21	11.
351	LINCOLN	1575	231	14.7	44	47	21	691	2387	0.3	11750	1.0	3.00	9.
361	MADISON-HUDSON-SOUTH 7TH AVE JR	2540	841	33.1	13	31	2420	1206	3455	0.3	11406	91.6	3.52	32.
361	MAPLE AVE	2571	351	14.8	38	46	2213	1501	3654	0.4	13456	85.2	3.17	24.
41	AVERY AVE-CLINTON PL JR	1501	549	36.6	10	26	1448	952	2010	0.5	6424	96.7	3.68	44.

"ESTIMATED DISADVANTAGED CHILDREN" IS THE NUMBER OF CHILDREN LIVING IN CROWDED HOUSING AVERAGED WITH THE NUMBER LIVING IN LOW RENT (UNDER $ 50/MONTH) AND LOW VALUE (UNDER $10000) HOUSING.

PRODUCED BY APPLIED DYNAMICS, INC., WASHINGTON, D.C.

EXHIBIT B

ELEMENTARY AND SECONDARY EDUCATION ACT (P.L. 89-10) PROGRAMS

The records submitted to us disclosed that:

1. Obligations reported were incurred during the fiscal year or project period for which the project was approved and, upon liquidation, were properly adjusted.
2. All obligations made for Federally supported Elementary and Secondary Education Act projects were made against approved projects.
3. Costs, such as salaries, travel, etc., were correctly prorated.

Examination of records was made in accordance with minimum audit requirements set forth by the State Department of Education on Elementary and Secondary Education Act operations.

The Elementary and Secondary Education Act financial exhibits contained herein (Exhibits A-14 through A-18) represent a true statement of the financial position pertaining to projects under Titles I, II, VIA and VIB of the Elementary and Secondary Education Act of 1965, P.L. 89-10.

During the year, the Board was allocated $9,589,400.00 of Federal funds for special education programs for educationally deprived children as follows:

	Title I	Title II	Title VI-A	Title VI-B	Total
Federal funds Cash Advanced to June 30, 1971	$9,400,360.00 6,645,062.00	$102,780.00 102,780.00	$10,550.00 --	$75,710.00 26,000.00	$9,589,400.00 6,773,842.00
Receivable at June 30, 1971	$2,755,298.00	$ --	$10,550.00	$49,710.00	$2,815,553.00

Expenditures amounted to $3,958,548.68 and are classified as follows:

	Budget	Expenditures	Balance
Administration	$ 250,077.00	$ 113,529.69	$136,547.31
Instruction	5,693,152.00	5,573,429.06	119,722.94
Attendance and Health Services	453,604.91	452,698.35	906.56
Transportation	146,981.00	140,907.50	6,073.50
Operation of Plant	48,284.00	41,499.93	6,784.07
Maintenance of Plant	110,114.80	102,326.35	7,788.45
Fixed Charges	844,754.00	685,439.76	159,314.24
Food Services	121,100.00	119,242.45	1,857.55
Community Services and Civic Activities	1,790,537.29	1,610,083.78	180,453.51
Capital Outlay	130,795.00	119,391.81	11,403.19
	$9,589,400.00	$3,958,548.68	$630,851.32

EXHIBIT B-1

1. The detail of the individual accounts comprising the opening balances of the Tuition Receivable Account at July 1, 1970 did not agree with the prior year's audit report in the amount of $778.00.

   We recommend that this difference be reconciled and the necessary adjustments recorded.

2. At June 30, 1971, there was $9,777,625.00 due from the City of Newark representing the balance of the proceeds of a bond sale in March 1971.

   We recommend that proceeds from the sale of bonds be promptly deposited with the Custodian of School Moneys in accordance with R.S. 18:24-47.

IMPROVEMENT AUTHORIZATIONS

1. At June 30, 1971, there were unfunded deferred charges of $755,00.00 representing improvement authorizations that were recorded by the Board before bond ordinances were adopted by the Municipal Council.

   We recommend that improvement authorizations be recorded after the adoption of bond ordinances by the Municipal Council and that no disbursements be made until such time.

FEDERAL PROJECTS

1. During our examination of expenditures for Federal programs, we determined that not all reports requesting reimbursement for these expenditures were filed on a timely basis.

   We recommend that reports requesting reimbursement from Federal agencies be filed on a timely basis in order to minimize delays in collection.

ELEMENTARY AND SECONDARY EDUCATION ACT 1965

1. During our audit of the Elementary and Secondary Education Act funds, we noted there are receivables of $137,763.64 for the 1968-1969 program that are disputed by the Federal Government.

   If the claim for the receivable is denied by the Government, we recommend that the balance be cancelled by the Board by resolution.

2. At June 30, 1971, the Board did not issue a blanket order for program expenditures for the period July 1, 1971 to August 31, 1971 as required under the Act for those programs ending August 31, 1971.

   We recommend that the Board comply with the Act.

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EXPENDITURES FOR
TITLE I SCHOOLS

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

August 25, 1970

EXHIBIT C

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

BUDGET DISTRIBUTION 1970-1971

ELEMENTARY SCHOOLS	B.R.L. Programmed Reading	Partici- pating Student-	Project Coordinator 02120005	Project/Dem. Development Teachers 02130001		Substitutes 1/10 @ $35 02130301		Clerk Steno 02150101		Teacher Aides 1 Ea.-Kdg. ½ Ea. 1st Gr. 02160003		Community Aides 02160009	Textbooks @ $6/P.S. 02200001	Instruc- tional Sup. @ $6/P.S. 02100007	Misc. Expenses @ $1/P.S. 02500102	E.S.E. Activities @ $1/P.S. 02500321	Trans- portation @ $4/P.S. 05200305	Telephone Base $100 06411401	New Equipment @ $1/P.S. 12600101	Totals
				No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.								
Abington Avenue		298	1	$ 14,450	2	$ 25,670	30	$ 1,050	1	$ 5,005	2	$ 6,106	1	$ 3,053	$ 1,788	$ 1,788	$ 298	$ 1,192	$ 1,192	$ 125	$ 298	$ 62,0
Avon Avenue		413	1	14,450	2	25,670	41	1,435	1	5,005	6	18,318	1	3,053	2,478	2,478	413	1,652	1,652	150	413	77,2
Belmont-Runyon		340	1	14,450	2	25,670	34	1,190	1	5,005	8	24,424	1	3,053	2,040	2,040	340	1,360	1,360	125	340	81,4
Bergen Street		524	1	14,450	3	38,505	52	1,820	1	5,005	8	24,424	1	3,053	3,144	3,144	524	2,096	2,096	150	524	99,0
Bragaw Avenue		580	1	14,450	3	38,505	58	2,030	1	5,005	6	18,318	1	3,053	3,480	3,480	580	2,320	2,320	150	580	94,3
Broadway Elementary	X	306	1	14,450	2	25,670	31	1,085	1	5,005	6	18,318	1	3,053	1,836	1,836	306	1,224	1,224	125	306	74,5
Burnet Street	X	294	1	14,450	2	25,670	29	1,015	1	5,005	4	12,212	1	3,053	1,764	1,764	294	1,176	1,176	125	294	68,0
Camden Street		515	1	14,450	3	38,505	52	1,820	1	5,005	15	45,795	1	3,053	3,090	3,090	515	2,060	2,060	150	515	120,1
Central Avenue		227	1	14,450	2	25,670	23	805	1	5,005	3	9,159	1	3,053	1,362	1,362	227	908	908	125	227	63,3
Charlton Street	X	413	1	14,450	2	25,670	41	1,435	1	5,005	6	18,318	1	3,053	2,478	2,478	413	1,652	1,652	150	413	77,2
Clinton Avenue	X	216	1	14,450	2	25,670	25	875	1	5,005	7	21,371	1	3,053	1,476	1,476	216	924	924	125	216	74,0
Clinton Street		374	1	14,450	3	38,505	37	1,295	1	5,005	7	21,371	1	3,053	2,244	2,244	374	1,496	1,496	125	374	97,1
Eighteenth Avenue		337	1	14,450	2	25,670	34	1,190	1	5,005	6	18,318	1	3,053	2,022	2,022	337	1,348	1,348	125	337	75,3
Fifteenth Avenue		555 455	1	14,450	3	38,505	50	1,750	1	5,005	11	33,583	1	3,053	2,970	2,970	455	1,980	1,980	150	455	107,4
Fourteenth Avenue		355	1	14,450	2	25,670	39	1,365	1	5,005	5	15,265	1	3,053	2,310	2,310	385	1,540	1,540	125	385	73,1
Franklin		279	1	14,450	2	25,670	28	980	1	5,005	5	15,265	1	3,053	1,674	1,674	279	1,116	1,116	125	279	71,0
Hawkins		360	1	14,450	2	25,670	35	1,260	1	5,005	6	18,318	1	3,053	2,160	2,160	360	1,440	1,440	125	360	75,1
Hawthorne Avenue		562	1	14,450	3	38,505	56	1,960	1	5,005	6	18,318	1	3,053	3,372	3,372	562	2,248	2,248	150	562	93,1
Hudson Street		179	½	7,225	½	6,418	15	525	1	5,005	-		1	3,053	894	894	149	596	596	100	149	25,0
Lafayette Street		440	1	14,450	2	25,670	44	1,540	1	5,005	6	18,318	1	3,053	2,640	2,640	440	1,760	1,760	150	440	77,0
Madison Annex		85	½	7,225	½	6,418	9	315	½	5,005	9	27,477	½	1,527	510	510	85	340	340	100	85	27,0
Madison Avenue	161	444	1	14,450	3	38,505	44	1,540	½	5,005	-		½	1,526	2,664	2,664	444	1,776	1,776	150	444	69,0
Peterboro		303	1	14,450	3	38,505	30	1,050	1	5,005	10	30,530	1	3,053	1,818	1,818	303	1,212	1,212	125	303	59,0
Miller Street		515	1	14,450	3	38,505	59	2,065	1	5,005	9	27,477	1	3,053	3,510	3,510	585	2,340	2,340	150	585	103,0
Morton Street		410	1	14,450	2	25,670	41	1,435	1	5,005	4	12,212	1	3,053	2,460	2,460	410	1,640	1,640	150	410	71,0
Newton Street	X	307	1	14,450	2	25,670	31	1,085	1	5,005	4	12,212	1	3,053	1,842	1,842	307	1,228	1,228	125	307	69,0
Oliver Street		259	1	14,450	2	25,670	26	910	1	5,005	4	12,212	1	3,053	1,554	1,554	259	1,036	1,036	125	259	67,0
Peshine Avenue		610	1	14,450	3	38,505	61	2,135	1	5,005	9	27,477	1	3,053	3,660	3,660	610	2,440	2,440	175	610	109,0
Putnam Street		675	1	14,450	3	38,505	68	2,380	1	5,005	10	30,530	1	3,053	4,050	4,050	675	2,700	2,700	175	675	109,0
Robert Treat	X	492	1	14,450	3	38,505	49	1,715	1	5,005	4	12,212	1	3,053	2,952	2,952	492	1,968	1,968	150	492	85,0
Roseville Avenue		157	1	14,450	1	12,835	16	560	1	5,005	8	24,424	1	3,053	942	942	157	628	628	100	157	45,0
South Street	X	169	1	14,450	1	12,835	11	385	1	5,005	4	12,212	1	3,053	654	654	169	676	676	100	169	50,0
South 16th Street		814	1	14,450	4	51,340	81	2,835	1	5,005	11	33,583	1	3,053	4,884	4,884	814	3,256	3,256	200	814	123,0
South 17th Street		619	1	14,450	3	38,505	62	2,170	1	5,005	8	24,424	1	3,053	3,714	3,714	619	2,476	2,476	175	619	101,0
South 18th Street		269	1	14,450	2	25,670	27	945	1	5,005	6	18,318	1	3,053	1,614	1,614	269	1,076	1,076	175	269	73,0
[illegible] Avenue		298	1	14,450	3	38,505	30	1,050	1	5,005	6	18,318	1	3,053	1,788	1,788	298	1,192	1,192	175	298	67,0
[illegible] Avenue		440	1	14,450	3	38,505	44	1,540	1	5,005	6	18,318	1	3,053	2,640	2,640	440	1,760	1,760	150	440	90,0
[illegible] Street		197	1	14,450	1	12,835	20	700	1	5,005	2	6,106	1	3,053	1,182	1,182	197	788	788	100	197	66,0
Waverly Avenue	X	339	1	14,450	1	12,835	23	805	1	5,005	4	12,212	1	3,053	1,794	1,794	299	836	836	175	299	53,0
Wilson Avenue		366	1	14,450	2	25,670	37	1,295	1	5,005	4	12,212	1	3,053	2,196	2,196	366	1,464	1,464	175	366	69,0
Not Participating - B.R.L.																						31

EXHIBIT C-1

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

August 25, 1970

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

BUDGET DISTRIBUTION 1970-1971

SECONDARY SCHOOLS SENIOR HIGH SCHOOLS	Participating Students	Project Coordinator 02120005 No.	Amt.	Project/Rem. Development Teachers 02130001 No.	Amt.	Substitutes 1/10 @ $35 02130001 No.	Amt.	Work(12 mo.) Experience Teachers 02140202 No.	Amt.	Clerk 02130101 No.	Amt.	Textbooks @ $6/P.S. 02200001	Instructional Sup. @ $6/P.S. 02400007	Misc. Expenses @ $1/P.S. 02500039	E.E.E. Activities @ $6/P.S. 02500021	Transportation @ $6/P.S. 05200005	Telephone Base $100 06400401	New Equipment @ $1/P.S. 12400101	Total
Barringer High	586	1	$ 14,450	1	$ 12,835	59	$ 2,065	-		1	$ 5,085	$ 3,516	$ 3,516	$ 586	$ 2,344	$ 2,344	$ 150	$ 586	$ 47,1
Central High	653	1	14,450	1	12,835	65	2,275	1	$ 14,455	1	5,085	3,918	3,918	653	2,612	2,612	175	653	63,4
East Side High	357	1	14,450	1	12,835	36	1,260			1	5,085	2,142	2,142	357	1,428	1,428	125	357	41,4
South Side High	473	1	14,450	1	12,835	47	1,645	1	14,455	1	5,085	2,838	2,838	473	1,892	1,892	150	473	59,4
Vocational High	410	1	14,450	1	12,835	41	1,435	1	14,455	1	5,085	2,460	2,460	410	1,640	1,640	150	410	57,4
West Side High	405	1	14,450	1	12,835	41	1,435	1	14,455	1	5,085	2,430	2,430	405	1,620	1,620	150	405	57,2
TOTALS SENIOR HIGH SCHOOLS	2,834	6	$ 86,700	6	$ 77,010	289	$ 10,115	4	$ 57,820	6	$ 30,510	$ 17,304	$ 17,304	$ 2,884	$ 11,536	$ 11,536	$ 900	$ 2,824	$ 326,5
JUNIOR HIGH SCHOOLS																			
Broadway Jr. High	159	1	$ 14,450	1	$ 12,835	16	$ 560			1	$ 5,085	$ 954	$ 954	$ 159	$ 636	$ 636	$ 100	$ 159	$ 36,5
Clinton Place Jr. High	441	1	14,450	3	38,505	44	1,540			1	5,085	2,646	2,646	441	1,764	1,764	150	441	69,4
Seventh Avenue Jr. High	278	1	14,450	2	25,670	28	980			1	5,085	1,668	1,668	278	1,112	1,112	125	278	52,4
Webster Jr. High	168	1	14,450	2	25,670	17	595			1	5,085	1,008	1,008	168	672	672	100	168	49,5
TOTALS JR. HIGH SCHOOLS	1,046	4	$ 57,800	8	$ 102,680	105	$ 3,675			4	$ 20,340	$ 6,276	$ 6,276	$ 1,046	$ 4,184	$ 4,184	$ 475	$ 1,046	$ 207,5
TOTALS SECONDARY SCHOOLS	3,930	10	$144,500	14	$ 179,690	394	$ 13,790	4	$ 57,820	10	$ 50,850	$ 23,580	$ 23,580	$ 3,930	$ 15,720	$ 15,720	$ 1,375	$ 3,930	$ 534,18

EXHIBIT C-2

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

August 25, 1970

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

Budget Distribution 1970-1971

SPECIAL SCHOOLS	E.R.L. Programmed Reading 02200009	Participating Students	Project Coordinator 02120006		Project/Rem. Development Teachers 02130001		Substitutes 1/10 @135 02130701		Work(12 mo.) Experience Teachers 02160702		Clerk Steno 02150101		Teacher Aides ½ Ea. Edg. ½ Ea. 1st Gr. 02160001		Textbooks @26/P.S. 02200001	Instructional Sup. @26/P.S. 02600007	Misc. Expenses @1/P.S. 02500109	E.E.E. Activities @24/P.S. 02500321	Transportation @24/P.S. 05200105	Telephone Base $100:$1/P.S. 06102101	New Equipment 12100101	
			No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.									
Alyea Street		23	½	$ 7,225	½	$ 6,418	2	$ 70			½	$2,562	2	$ 6,106	$ 138	$ 138	$ 23	$ 92	$ 92	$ 100	$ 23	$	
Arlington Avenue		44	½	7,225	½	6,417	4	140			½	2,563	2	6,106	264	264	44	176	176	100	44		
Boylan Street		92	½	7,225	½	6,418	9	315			½	2,562	2	6,106	552	552	92	368	368	100	92		I
Branch Brook		69	½	7,225	½	6,417	7	245			½	2,563	2	6,106	414	414	69	276	276	100	69		
Bruce Street Deaf		42	½	7,225	½	6,418	5	175			½	2,562	2	6,106	294	294	49	196	196	100	49		
Elliott Street Blind		21	-		-		2	70			1	5,095	1	3,053	126	126	21	84	84	100	21		
Girls' Trade	X	51	½	7,225	½	6,417	9	315			½	2,562	2	6,106	546	546	91	364	364	100	91		
Montgomery Street		313	1	14,450	1	12,835	31	1,085	1	14,455	1	5,095	3	9,159	1,878	1,878	313	1,252	1,252	125	313		
South Eleventh Street		98	½	7,225	½	6,418	10	350			½	2,563	3½	9,159	588	588	98	392	392	100	98		
South Market Street		46	½	7,225	½	6,417	5	175			½	2,563	2	6,106	276	276	46	184	184	100	46		
Wickliffe Street		32	½	7,225	½	6,417	3	105			½	2,563	1	3,053	192	192	32	128	128	100	32		
Woodland Avenue		32	½	7,225	½	6,417	3	105			½	2,563	1	3,053	192	192	32	128	128	100	32		
TOTALS SPECIAL SCHOOLS		$3,888	910		6	$86,700	6	$ 77,009	90	$3,150	1	$14,455	7	$35,596	23	$70,219	$ 5,460	$ 5,460	$ 910	$ 3,640	$ 3,640	$ 1,225	$ 910	$

EXHIBIT C-3

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

August 25, 1970

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

BUDGET DISTRIBUTION 1970-1971

Public Schools	Participating Students	Project Coordinator 02120026		Project/Ten. Development Teachers 02127101		Substitutes 1/10 @ $35 02130001		Clerk Steno 02150101		Teacher Aides ½ Ea. Reg. ½ Ea. 1st Gr. 02160007		Community Aides 02160009		Textbooks @ $5/P.S. 02200701	Instructional Sup. @ $5/P.S. 02400007	Misc. Expenses @ $1/P.S. 02500109	E.E.E. Activities @ $4/P.S. 02500121	Transportation @ $4/P.S. 05200121	Telephone Base $100 05100401	New Equipment @$1/P.S. 12600101	Totals
		No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.								
...en of Angels	100	½	$ 4,575	½	$ 4,200	10	$ 350	½	$ 2,562	1	$ 3,053	1	$ 3,053	$ 600	$ 600	$ 100	$ 400	$ 400	$ 100	$ 100	$ 20,873
...Aloysius	133	½	4,575	½	4,200	13	455	½	2,562	1	3,053	1	3,053	798	798	133	532	532	100	133	20,505
...Ann	133	½	4,575	½	4,200	13	455	½	2,562	1	3,053	1	3,053	798	798	133	532	532	100	133	20,994
...Antonious	118	½	4,575	½	4,200	12	420	½	2,562	1	3,053	1	3,053	708	708	118	472	472	100	118	20,560
...Augustine	66	½	4,575	½	4,200	7	245	½	2,562	1	3,053	1	3,053	396	396	66	264	264	100	66	19,220
Charles Borromeo	124	½	4,575	½	4,200	12	420	½	2,562	2	6,106	1	3,053	744	744	124	496	496	100	124	23,725
Columba	239	½	4,575	½	4,200	14	490	½	2,562	2	6,106	1	3,053	834	834	139	556	556	100	139	24,124
Lucy	89	½	4,575	½	4,200	9	315	½	2,562	1	3,053	1	3,053	534	534	89	356	356	100	89	19,797
Mary	110	½	4,575	½	4,200	11	335	½	2,562	1	3,053	1	3,053	660	660	110	440	440	100	110	20,328
Michael	255	1	9,150	1	8,400	26	910	½	2,562	3	9,159	1	3,053	1,536	1,536	255	1,024	1,024	125	256	33,972
Patrick	93	½	4,575	½	4,200	9	315	½	2,562	1	3,053	1	3,053	558	558	93	372	372	100	93	19,854
...Teresa	109	½	4,575	½	4,200	11	385	½	2,741	2	6,106	1	3,053	654	654	109	436	436	100	109	23,250
...ham School	-		-		-		-	½	2,562		-		-	-	-	-	-	-	-	-	2,562
...LS FOR PUBLIC SCHOOLS	1,670	6½	$ 59,475	6½	$ 54,600	147	$5,145	6½	$33,052	17	$ 51,901	12	$ 35,636	$ 8,820	$ 8,820	$ 1,470	$ 5,880	$ 5,880	$ 1,225	$ 1,470	$ 274,374

EXHIBIT C-4

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

August 25, 1970

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

SCHOOLS FOR BILINGUAL PROGRAMS	Participating Students	Project Coordinator 02120035 No.	Amt.	Clerk Steno 02150101 No.	Amt.	Textbooks @ $6/P.S. 02200031	Instructional Sup. @ $6/P.S. 02400007	Misc. Expenses @ $1/P.S. 02500309	E.E.E. Activities @ $4/P.S. 02500321	Transportation @ $1/P.S. 05200305	Telephone Base $100 06400401	New Equipment @ $1/P.S. 12400301	Totals
Halsey Elementary - Bilingual	119	½	$ 7,225	½	$ 2,543	$ 714	$ 714	$ 119	$ 476	$ 476	$ 100	$ 119	$ 12,486
Broadway Jr. High - Bilingual	61	½	7,225	½	2,543	366	366	61	244	244	100	61	11,210
Morton Street - Bilingual	185	1	14,450	½	2,543	1,110	1,110	186	744	744	100	185	21,185
Franklin - Bilingual	149	1	14,450	½	2,543	894	894	149	596	595	100	149	20,321
McKinley - Bilingual	346	1	14,450	½	2,543	2,076	2,076	346	1,384	1,384	125	346	24,730
Oliver Street - Bilingual	127	1	14,450	½	2,543	762	762	127	508	508	100	127	19,937
South Street - Bilingual	61	1	14,450	½	2,543	366	366	61	244	244	100	61	18,435
Sumner Avenue - Bilingual	217	1	14,450	½	2,543	1,302	1,302	217	868	868	125	217	21,652
Webster Jr. High - Bilingual	87	½	14,450	½	2,543	522	522	87	348	348	100	87	19,007
NEWARK SCHOOLS FOR BILINGUAL PROGRAMS	1,353	8	$115,600	4½	$22,887	$8,118	$ 8,118	$ 1,353	$ 5,412	$ 5,412	$ 950	$ 1,353	$ 149,203

EXHIBIT C-5

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

August 25, 1970

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

BUDGET ESTIMATION 1970-1971

SCHOOL SUMMARY	Participating Students	Project Coordinator 02120006	Project/Rem. Development. Teachers 02130001	Substitutes 1/10 @ $35 02130901	Work Exp. Tchrs. (12 mo.) 02160702	Clerk Steno 02150101	Teacher Aides ½ Ea. Kdg. & 1st Gr. 02160007	Community Aides 02160009	Textbooks @ $6/P.S. 02200001	Instructional Sup. @ $6/P.S. 02400007	Misc. Expenses @ $1/P.S. 02500109	E.E.E. Activities @ $4/P.S. 02500121	Transportation @ $4/P.S. 05200105	Telephone Base $100 06100401	New Equipment @ $1/P.S. 12400101	B.E.E. Programmed Reading 02200009	Totals
ELEMENTARY	15,185	$ 563,550	$1,155,151	$ 53,270	-	$ 198,315	$ 732,720	$ 119,063	$ 91,110	$ 91,110	$ 15,185	$ 60,740	$ 60,740	$ 5,425	$ 15,185	$ 31,112	$3,192,6
SECONDARY	3,930	144,500	179,890	13,790	$ 57,870	50,850	-	-	23,580	23,580	3,930	15,720	15,720	1,375	3,930	-	534,4
SPECIAL	910	65,700	77,009	3,150	14,455	15,536	70,219	-	5,460	5,460	910	3,640	3,640	1,225	910	3,888	312,2
NEW PUBLIC	1,470	59,475	54,600	5,145	-	33,052	51,901	36,636	8,820	8,820	1,470	5,880	5,880	1,225	1,470	-	276,3
No. of Personnel		(6½)	(110½)		(5)	(6½)	(280)	(51)									
SUB TOTALS	21,495	$854,225	$1,456,450	$75,355	$72,775	$317,813	$854,840	$155,703	$128,970	$128,970	$21,495	$85,980	$85,980	$9,250	$21,495	$35,000	$4,313,8
Early Childhood Eq. Title III	-	-	(8) $80,000	$ 4,620	-	-	-	-	-	-	-	-	-	-	-	-	$ 84,6
			$1,536,450	$79,975													
NEW CAMP CITY BUDGET																	
Bilingual Program	1,353	(8)$115,600	-	-	-	(3½)$22,887	-	-	$ 8,118	$ 8,118	$ 1,353	$ 5,412	$ 5,412	$ 950	$ 1,353	-	$ 169,2
Experimental Classes @ Robert Treat School		-	-	-	-	-	(8) $24,495	-	-	$ 4,000	-	$ 1,800	$ 1,200	-	-	-	$ 31,4

EXHIBIT C-6

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT OF SCHOOLS
SPECIAL ASSISTANCE PROGRAMS
NEWARK, NEW JERSEY

August 25, 1970

P.L. 89-10 ELEMENTARY and SECONDARY EDUCATION ACT OF 1965
TITLE I PROGRAM FOR EDUCATIONALLY DEPRIVED CHILDREN
(All salaries are averaged for budgetary purposes and do not reflect individual salaries which are paid according to Board Schedules)

BUDGET DISTRIBUTION 1970-1971

SCHOOL SUMMARY	Participating Students 02120006	Project Coordinator 02120006	Project/Rem. Development. Teachers 02130101	Substitutes 1/10 @ $35 02130001	Work Exp. Tchrs. (12 mo.) 02110202	Clerk Steno 02150101	Teacher Aides ½ Ea. Kdgt. & Ea. 1st Gr. Aides 02160007	Community Aides 02160009	Textbooks @ $5/P.S. 02200001	Instructional Sup. @ $5/P.S. 02140007	Misc. Expenses @ $1/P.S. 02500109	E.E.E. Activities @ $4/P.S. 02500121	Transportation @ $4/P.S. 05200305	Telephone Base $100 06100101	New Equipment @ $1/P.S. 12500101	B.R.L. Programmed Reading 02200009	
ELEMENTARY	15,185	$ 563,550	$1,155,151	$ 53,270	-	$ 198,315	$ 732,720	$ 119,067	$ 91,110	$ 91,110	$ 15,185	$ 60,740	$ 60,740	$ 5,425	$ 15,185	$ 31,112	$
SECONDARY	3,930	146,500	179,690	13,790	$ 57,820	50,850	-	-	23,580	23,580	3,930	15,720	15,720	1,375	3,930	-	
SPECIAL	910	86,700	77,009	3,150	14,455	35,596	70,219	-	5,460	5,460	910	3,640	3,640	1,225	910	3,833	
NON PUBLIC	1,470	59,475	56,600	5,145	-	33,052	51,901	36,636	8,820	8,820	1,470	5,880	5,880	1,225	1,470	-	
No. of Personnel		(61½)	(116½)		(5)	(62½)	(200)	(51)									
SUB TOTALS	21,495	$954,225	$1,466,450	$75,355	$72,275	$317,813	$854,840	$155,703	$128,970	$128,970	$21,495	$85,980	$85,980	$9,250	$21,495	$35,000	$
Early Childhood Kdg. Title III	-		(8) $80,000	$ 4,620	-	-	-	-	-	-	-	-	-	-	-	-	$
			$1,545,450	$79,975													
PTCH CARRY OVER BUDGET																	
Bilingual Program	1,353	(8)$115,600	-	-	-	(6½)$22,807	-	-	$ 8,118	$ 8,118	$ 1,353	$ 5,412	$ 5,412	$ 950	$ 1,353	-	$
Experimental Classes at Robert Treat School	-	-	-	-	-	-	(8) $24,424	-	-	$ 4,000	-	$ 1,800	$ 1,200	-	-	-	
GRAND TOTALS	22,848	$960,225	$1,466,450	$75,355	$72,275	$317,813	$879,264	$155,703	$137,088	$140,088	$22,848	$91,392	$91,392	$10,200	$22,848	$35,000	$

SELECTION OF ATTENDANCE AREAS FOR TITLE I PROJECTS

The attendance areas selected for Title I projects are those areas which, on the basis of the best available information have high concentrations of children from low-income families.

Eligible schools have been listed in order of highest concentration. The criterion used in qualifying schools was based on statistics on Aid for Dependent Children supplied by the Essex County Welfare Board.

Before selecting this method for qualifying attendance areas and schools within those attendance areas the following data were also examined:

- Housing statistics supplied by Applied Urbanetics
- Model Cities Statistics (Entire City of Newark is now a Model Neighborhood)
- Free lunch and free breakfast statistics (32,865 served daily)
- High percentage of Puerto Rican children
- High incidence of foreign born and non-English speaking children
- Health Statistics
- Unemployment and Underemployed statistics

It should be noted that in comparing the statistics and projections compiled by Applied Urbanetics and the A.D.C. statistics provided by the Essex County Welfare Board, that each complements (possibly validates) the other.

	Applied Urbanetics	ADC Statistics
Children from low-income families 5-17	33,011	32,352
District Wide Percentage	32.6%	33.3%

EXHIBIT E

AVERAGE DAILY PARTICIPATION	Fish Type "A"	Fare	Daily Receipts
	47316	7169	3378
	40156	8151	5748
	46481	10113	5225
	44003	8115	3651
	41451	8105	1784
	42352	7771	1891
	42277	8322	6496
	52381	12156	4668
JUNIOR HIGH SCHOOLS	96,300	11,363	8,313
	32013	8816	1855
	32711	11134	1523
	35117	10156	1823
	15617	5127	1348
	11382	4021	976
	98977	71,419	4,197
	63103	8315	3372
	56103	6891	2372
	42347	5113	1653
AVG	25611	4241	1637
	13603	3913	1403
	14121	4744	1716
	10431	3701	1342
	36177	11616	4121
	21603	7165	2323
	15163	5317	1732
	30367	9591	3472
	41331	13711	4945
	18044	6132	2165
	11063	3691	1351
	27167	9604	3603
	16113	5312	2016
	17373	6165	2103
	11053	3855	2711
	9641	3117	1325
	10871	3721	1115
	31261	10351	3724
	23612	7370	2611
	21112	6855	2325
	21161	7155	2516
	13302	4690	1637
BY GRADES	443048	32,611	22352
	1110	1116	376
	3423	1166	1292
	1541	4911	1695
	2491	2497	835
	3913	2113	2152
	1111	1111	375
	24,951	15,716	12,471
	471,304	427,507	32,823

NEW JERSEY STATE DEPARTMENT OF EDUCATION

Audit Control No. 50006-02

	No. of Copies
HEW Action Official	
Deputy Commissioner Bureau of School Systems 400 Maryland Avenue, S.W. Washington, D.C. 20202	4
Other Parties	
Chief, Audit Liaison & Coordination Staff Office of Education FOB 6 Room 3127 400 Maryland Avenue, S.W. Washington, D.C. 20202	1
Regional Director	1
Regional Commissioner for Education	2
Director, Planning Systems Assistant Secretary for Planning & Evaluation Department of Health, Education, & Welfare Room 4639, North Building 330 Independence Avenue, S.W. Washington, D.C. 20201	1
New Jersey State Department of Education	2
Audit Agency	
Division of Audit Coordination	7
Regional Office	2

[SEAL]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF EDUCATION
Washington, D.C. 20202

Jun. 11, 1976

Our Reference: ACN: 50006-02
Honorable Fred G. Burke
Commissioner of Education
State Department of Education
Trenton, New Jersey 08625

Dear Commissioner Burke:

Reference is made to the Health, Education, and Welfare Audit Agency report of audit of the operation and administration of the Title I, Elementary andy Secondary Education Act program as it relates to the Selection of Target Areas in the Newark LEA in your State for the period September 1, 1970 to August 31, 1973.

The decisions set forth in this letter are based on a thorough examination of the audit report and all information your agency has submitted for purposes of resolving the pending audit exceptions including its most recent response of May 7, 1976. We are not in a position to announce our final determinations with respect to those unsettled matters included in the above-cited audit report. Our decision is that it will be necessary for your agency to refund $1,161,917 to the Office of Education in order to settle this audit. In Enclosure No. 1 to this letter, you will find a detailed discussion of our determinations.

If your agency concurs with our final determinations, you should submit payment in the amount of $1,161,917 to the U.S. Office of Education. Should your agency wish to ap-

peal our final decision you may request a hearing. The procedure for a hearing on appeal of final audit determinations is contained in Enclosure No. 2 to this letter.

Sincerely,

/s/ Robert R. Wheeler
ROBERT R. WHEELER
Deputy Commissioner
for School Systems

Enclosures

Enclosure No. 1

FINAL AUDIT DETERMINATIONS

Audit Control No: 50006-02

State: New Jersey

Program: Title I, ESEA

Period Covered: September 1, 1970 to August 31, 1973

SELECTION OF TARGET AREAS—$1,161,917

The auditors' review disclosed that the Newark LEA used Title I funds totaling $1,161,917, in school years 1970-71 and 1971-72, in schools which did not meet the eligibility requirements established in Section 116.17 of the Title I regulations. The auditors asserted that critical review of project applications for these periods by officials of your agency and the LEA would have disclosed information gaps and a lack of detail on the methods used to determine eligibility of school attendance areas. The auditors indicated that although source data in support of the 1970-71 eligibility determinations were not available, it was clear on the face of the project application for that year that one school, based on the low-income percentage shown, was improperly classified as eligible and received $91,266 in Title I program funds. The auditors noted that during school year 1970-71, ten schools received $41,021 in Title I funds even though they did not appear on the LEA's approved project application and were, therefore, ineligible. The auditors also discovered that in school year 1971-72, the Newark LEA, by using improper ratios, misclassified 13 schools as eligible to receive $1,029,630 in Title I funds. The breakdown is as follows:

Expenditures by Ineligible School (Lafayette) Shown as Eligible in Project Application—$91,266

The auditors found that because the LEA failed to retain the essential documentation, the reliability of the districtwide percentage of low-income children, stated in the application of 25.5 percent, could not be confirmed. In addition, the auditors could not validate the low-income percentage computed for each attendance area. The auditors, therefore, could not determine which of the 74 schools listed in the Title I application were actually eligible for Title I funds. However, they noted that among the schools included in the application there was one, the Lafayette Street School, which on the face of the application showed a low-income percentage of 23.5 percent, which was two full percentage points below the stated districtwide average of 25.5 percent. The auditors, therefore, concluded that the use by this school of $91,266 in Title I funds was in violation of Section 116.17(d) of the Title I regulations. Your agency's earlier responses regarding this matter were reviewed and determined to be inadequate. Your agency's latest response, dated May 7, 1976, does not refute the auditors' finding. Instead it states that your agency had verbally "cited" the district regarding its target area selection source material and apparently "considered the poor economic environment in Newark at that time" as an adequate basis upon which to approve the expenditure of Title I funds. This response is clearly not adequate to refute the auditors' finding and, in fact, supports their contention that your agency's review of target area selection processes was deficient. Therefore, your agency must refund the sum of $91,266 to the Office of Education.

Expenditures by Ten Ineligible Schools Excluded from Application—$41,021

The auditors' review disclosed that during school year 1970-71 ten schools, which were not eligible to receive

Title I funds because they were not listed on the Title I application as constituting Title I school attendance areas, expended Title I funds totaling $41,021 in violation of Sections 116.17(a) and (c) of the Title I regulations. Your agency's earlier response to this finding was inadequate. The supplemental response of May 7, 1976, does not attempt to refute the auditors' finding. It merely asserts that your agency has encountered difficulty in developing a response to the auditors and requests the documentation used in their review. In view of the fact that your agency (1) has direct access to the Newark LEA's target area selection material, (2) indicated in your earlier response (December 10, 1974) that it had already reviewed the material in question, and (3) failed to request copies of the audit workpapers at the exit conference or at the meeting held in Washington, D.C., on November 19, 1975, or during the period which passed between that meeting and your supplemental response, we do not feel that it is appropriate to delay resolution of this matter further. Therefore, your agency must refund the sum of $41,021 to the Office of Education.

Expenditures Due to Improper Identification of Eligible School Attendance Areas—$1,029,630

The auditors found that the method used by the Newark LEA to determine the eligibility of attendance areas for school year 1971-72 deviated from that set forth in Title I regulatory mandates, particularly Section 116.17(d) of the Title I regulations. The LEA utilized AFDC statistics from the County Welfare Board which listed the total number of children in the AFDC category enrolled at each regular public elementary and secondary school. These statistics, however, were incomplete since they excluded those children on AFDC rolls who were attending nonpublic, or special educational schools or who had dropped out of school. The limitations of the statistics suggested to the LEA the use of an alternative ratio presented in ESEA INST. L203.1, section 1.1. This section recognized that in some instances (as did not exist in Newark during the period in question) schools may not have well-defined attendance area boundaries or receive numbers of children from outside the areas that have been designated to those schools. In such cases, it may be necessary to use a ratio for ranking attendance areas which is based on the percentage or number of children from low-income families actually enrolled in those schools rather than the number of such children eligible to attend the public school serving that attendance area. The auditors pointed out that while the former ratio was not permitted to be used by the LEA under ESEA INST. L203.1, it was a reasonable alternative under the circumstances.

However, the auditors found that in its attempt to apply the selection system described by INST. L203.1, the LEA devised hybrid ratios which deviated from the method specified. The auditors revealed that the ratios utilized by the LEA had basic mathematical flaws which tended to inflate the low-income percentages for individual elementary and secondary school areas and thus to increase improperly the number of eligible attendance areas. Based on their recalculation of the target area selections for the Newark LEA, the auditors determined that ten elementary schools and three secondary schools had low-income percentages lower than the district wide average and were ineligible for Title I funding. The auditors recommended that your agency be required to refund the $1,029,630, which represents the Title I funds expended at schools which were determined to be ineligible to receive such funds.

Your December 10, 1974, response to the auditors was based on the assertion that the auditors only utilized AFDC data in arriving at their recalculation rather than the several sources listed in the Newark application and that the number of children identified as eligible was too low. In support of your agency's position, is the pertinent

page of the Newark LEA project application. However, this document clearly states that "the criterion used in qualifying schools based on statistics on Aid for Families of Dependent Children was supplied by the Essex County Welfare Board." It further states that, "Before selecting this method for qualifying attendance areas and schools with those areas the following data (those noted in your response) were also examined." In view of the obvious support which your submission gave to the auditors' recalculations, we could not accept your earlier response as adequate to refute their findings.

Your agency's supplemental response of May 7, 1976, provides an ex post facto recalculation of the target area selection figures for the schools found to be ineligible by the auditors. However, your response states that your agency used in the denominator of its calculations "the Elementary School enrollment *plus the percentage of students attending the Junior High and High School from that eligible attendance area.*" (emphasis supplied) This is exactly that same type of improper count which gave rise to the initial audit exception and which this Office has already indicated is not permissible under the regulations or INST. L203.1. Therefore, your agency must refund the sum of $1,029,630 to the Office of Education.

[SEAL]

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
225 West State Street
Trenton, N.J.

OFFICE OF THE COMMISSIONER

October 21, 1976

Mr. Robert R. Wheeler
Deputy Commissioner
Office of Education
Department of Health, Education
and Welfare
Washington, D.C. 20202

Re: ACN: 50006-02 (Newark Board of Education, Title I Audit)

Dear Mr. Wheeler:

Enclosed please find the New Jersey State Department of Education's application for review of the "Final Audit Determinations" based upon an audit of Newark Title I programs for the period September 1, 1970 to August 31, 1973. Attached to that application is a copy of the agency notification.

Please note that by a letter dated August 23, 1976, David S. Pollen, Chairman of the Audit Hearing Board granted this agency an additional 60 Days in which to prepare and submit documentation to support its request for a hearing.

Sincerely,

/s/ Fred G. Burke
FRED G. BURKE
Commissioner

Attachments

NEW JERSEY DEPARTMENT OF EDUCATION
APPLICATION FOR REVIEW
OF FINAL AUDIT DETERMINATION
BASED ON ACN: 50006-02

October 21, 1976

INTRODUCTION

This is an application by the New Jersey Department of Education (State) for a review of final audit determinations of the Office of Education (OE) of the Department of Health, Education and Welfare dated June 11, 1976 and received by the State on June 28, 1976. The conclusions expressed in that communication were based largely on an audit of the use of funds in Newark appropriated under Title I of the Elementary and Secondary Education Act, 20 U.S.C. 241a *et seq.*, during fiscal years 1970-1973. The State expressed its desire to take an appeal from those determinations, and a hearing was requested pursuant to 45 C.F.R. 16 *et seq.* by a letter dated July 22, 1976. Appendix A.

The audit report on which OE's final determination was based was received by the New Jersey Commissioner of Education on October 21, 1974. The auditors recommended that the State refund Title I funds in excess of $1.1 million which were spent on schools allegedly ineligible to receive funds under federal law in the school years 1970-71 and 1971-72. The auditors asserted generally that the local educational agency (LEA) had misclassified as eligible a number of schools that did not satisfy the requirements of Title I regulations and that the state educational agency (SEA) had failed to act to prevent such improper use of program funds.

The State's initial response, dated December 10, 1974, provided an answer based on such data as were available. Thereafter, a meeting was held on November 19, 1975 between HEW and representatives of SEA. Neither the individuals who prepared the answer of December 10, 1974 nor those who met at HEW are now employed by SEA. Therefore, the State was under a considerable disadvantage when it filed its final response to the audit on May 7, 1976. It had been provided with no record of what transpired at that meeting. OE had also failed to furnish documentation which formed the basis of one audit exception. Since so much of the final determination is

couched in conclusory language, the State is still unable to make a meaningful response. By contrast, OE has been supplied with all relevant documentation at the State's disposal.

The final audit determination, requesting the return of $1,161,917 was based upon three specific audit exceptions: (1) expenditures by an allegedly ineligible school (Lafayette Street School) in school year 1970-71 ($91,266); (2) expenditures by ten schools not listed on the 1970-71 application ($41,201); and (3) expenditures due to identification of Title I target areas through an allegedly impermissible formula ($1,029,630). Each of these exceptions will be considered in some detail later in this application for review. However, it is sufficient to note here that the State, in its final response to the auditors, provided a recalculation for the supposedly ineligible schools for 1971-72 (the exception for which comprises the far greater part of the total amount requested). The formula used for that recalculation was permissible under regulations existing at the time of the application, and the accuracy of the statistics used is not challenged by OE. In short, there has never been as satisfactory rebuttal provided to the recalculation.

From this brief review of the history of this audit and application for review, as well as the contents of the preliminary audit report and final determinations, it is apparent that the State has been severely disadvantaged in its attempts to provide specific responses to each allegation. Also prejudicial to the State's effort is the passage of time taken between steps by the federal agencies. The State is faced with the task of meeting conclusions—some only partially supported by documentation, others supported not at all—based upon allegations contained in an audit report completed more than two years ago. The LEA applications containing the material commented upon in that report were completed, respectively, five and six years ago. It should also be noted that SEA officials attempted to administer those programs in the face of a confusing, and often conflicting, mix of federal regulations and pronouncements.

Beyond the procedural objections stated above, the State is determined to defend the educational needs of the school children of Newark and to show the validity of Newark's Title I program during fiscal years 1970-73. Since the OE rebuttal to the State's last response is largely unsatisfactory, it is compelled to restate many of its objections to the preliminary audit report. In doing so, the State is confident of its ability to demonstrate the propriety of its actions and that it fulfilled its statutory mandate under both existing federal guidelines and the local conditions to which those guidelines were applied.*

DISCUSSION

It appears that OE has accepted virtually all of the conclusions arrived at by the auditors. Therefore, this application must be one for review of that audit report as well as of OE's final determinations. But before each specific finding is answered, it is essential that the circumstances surrounding the Title I program across the state and the general economic climate in Newark during the subject years be described.

Some of the difficulties uncovered by the audit were no doubt engendered by some degree of confusion in the administration of the program at all levels. State and local agencies were faced with conflicts between federal statutes and regulations governing the program and informal administrative pronouncements periodically issued to interpret them. During this early phase of Title I, there was a complete absence of clear regulations. Discrepancies between those existent have been well-documented elsewhere

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* OE has never informed the State of the basis for its refund request although repeatedly asked to do so. The State is confident that it will prevail in this application, and therefore will not address the question of refunds at this time. However, it is aware of no authority for this refund procedure and reserves its right to challenge OE's authority to employ it at a later date.

and are thoroughly familiar to educators at the federal level.

The version of Title I which confronted the Newark LEA at the beginning of the 1970 and 1971 school years, through its lack of specificity, added to the confusion that attended the implementation of the law. It contained no clear definition either of the type of child Title I funds were to serve or the type of area to which they were to be applied. Federal regulations adopted pursuant to the Act provided some guidance, but were still lacking in specificity. For example, 45 C.F.R. 116.1 (i) defines "educationally deprived children" as:

> ". . . those children who have need for special educational assistance in order that their level of educational attainment may be raised to that appropriate for children of their age. The term includes children who are handicapped or whose needs for such special educational assistance result from poverty, neglect, delinquency, or cultural or linguistic isolation from the community at large."

and 45 C.F.R. 116.1(v) defines "project area" as:

> ". . . the attendance area, or combination of attendance areas, having a high concentration of children from low-income families which, without regard to the location of the project itself, is designated as the area whose children are to be served by the project . . . ."

Neither the statute nor these regulations in effect during the relevant fiscal years sets forth precise criteria to be considered by an LEA in determining whether a child qualifies as "educationally deprived" and whether a project area contains a high enough percentage of low-income children so that it might be considered eligible.

The HEW audit agency apparently based its findings on AFDC data that OE, in its final audit determination, admitted were incomplete because they did not reflect the

total number of low-income families with school-aged children in the district. One suggestion for dealing with such unsatisfactory statistical information, offered by Harold Howe, U.S. Commissioner of Education, in the *ESEA Title I Program Guide #44*, was addressed to the chief school officers of all states:

> "In some cases, income data are not available or are out-of-date and the number of children from low-income families will need to be estimated on the basis of the number of such children who are receiving Aid to Families with Dependent Children (AFDC) or who are receiving free lunches. *Housing, health, or employment statistics may also be used in estimating the number of children from low-income families in each attendance area. . . .*
>
> Normally the attendance units should be ranked according to percentages of low-income families. . . . If necessary for reasons of equity the attendance units determined to have high concentration of low-income families may include some areas ranked on one basis and some on the other."
> (Emphasis added).

Eschewing complete dependence on such incomplete data, local Title I coordinators fell back on their own assessment of the needs of their districts and the locations of low-income populations. To a great extent, the Newark LEA depended on this practice, which was expressly approved of by Commissioner Howe in a letter dated February 27, 1967:

> "The degree of concentration from low-income families may be estimated, if better data are not available, on the basis, of the number or percentage of children from low-income families actually attending each of the schools being operated by the applicant local educational agency." (Emphasis added).

Other OE communications as well recognized the probable need for estimating data. In "The Schoolman's Guide

to Federal Aid, Part II. Implementation of Projects," reprinted from the December 1965 issue of *School Management* and distributed to all superintendents in January 1966, the director of program operations in OE's Bureau of Elementary and Secondary Education said the following about the problems in data collection:

> "Schoolmen shouldn't be struck with inaccurate data—and they are not. They can conduct their own poverty census and *they don't have to stick with the $2,000 income factor*. They can use some other factor, or factors, that serve their purpose better. For example: How many families have incomes under $4,000 a year? They can go to the welfare agency and find out how many children are on welfare programs. Even housing data will give valid clues. *All* of this type of data can give a valid index of poverty.
>
> If accurate information, even of this type, is not available for some schools, or for some attendance area, the superintendent can meet with the school principal and other personnel, put together whatever information they have and come up with a *pooled judgment* as to the schools with the highest concentrations of children from low-income families. This is acceptable but I want to stress that it should be used *only* as a last resort.
>
> For example, in order to qualify for participation in a Title I project, a school's attendance area must show a percentage of children from low-income families that is at least as high as the over-all percentage for the district. This is causing some trouble because administrators are finding that some of their concentrated pockets of poverty are in schools that do not, using available statistics, show a relatively high *percentage* of low-income children. In this situation the pooled judgment of the district's staff could be used to show that this particular school qualifies for participation in a Title I program." (Emphasis original).

Also critical of OE's use of *only* AFDC as a determinant of eligibility is Report No. 93-805 on the Education Amendments of 1974 by the House Labor and Education Committee, which stated:

> "The committee bill has reduced the use of AFDC counts for distributing Title I funds because of the inequitable distribution of funds which has resulted in the last several years and also because we believe that the AFDC program in its present state does not provide accurate or reliable statistics on poverty throughout the country. Federal administrators of the program concur in this conclusion since they appeared before the committee and urged that AFDC statistics not be used for distributing funds." 1974 U.S. Code Cong. & Admin. News 4101.

The reason for this sudden loss of confidence was the realization that the welfare program left in the state a wide discretion to decide who is eligible and the amount of assistance granted to each such individual.

In addition, in a letter * dated June 14, 1974, to the New Jersey Title I Coordinator, Richard L. Fairley, Director of OE's Office for the Disadvantaged, recommended that the state agency instruct LEA's that besides primary source data (AFDC, census), weight should also be given to such secondary source data as unemployment and health statistics, school lunch data, and school surveys.

That this was done for the subject years is borne out by the Newark LEA applications, which evidence a conscientious effort to locate areas which had a high concentration of children from low-income families on the basis of the best information *then* available. For example, the 1970-71 application shows that the following factors,

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* See Appendix B, page 7.

all of which were approved of as criteria by OE, were utilized:

1) AFDC statistics supplied by the Essex County Welfare Board
2) Free lunch and free breakfast programs
3) Model Cities data
4) Housing statistics
5) Bussing of children from areas with high concentration of foreign-born and non-English speaking children
6) Health survey and statistics on school-age children.

In addition, Newark conducted its own survey to gauge the need for Title I-type aid. The Interim Progress Reports, Newark BOE Title I by Planners Associates, Inc. indicated that a large segment of Newark's school-age population fell below national norms in reading and mathematics. For example, a city-wide test administered in October 1969 indicated that an average of 80 out of 100 third-graders fell below the national norms. Among sixth-graders, the below average rate fell to 90 out of 100. Reported data also showed that a majority of children in *all* of the project areas suffered from at least one of the following educational handicaps:

1) insufficient knowledge of English
2) poor speech patterns
3) lack of an ability to communicate verbally with others
4) low levels of aspiration and self-esteem
5) health, home and cultural handicaps

With all of this considered, the reported AFDC District-wide low-income percentage for 1970-71 (25.5) is but a poor reflection of the conditions in Newark at that

time. It ignores in particular the aforementioned conditions and statistics considered by LEA and gathered from a variety of sources as well as the severe conditions of overcrowding in the elementary schools. Of the 82,314 children registered in Newark public schools during school year 1969-70, a majority, 51,886, were in grades kindergarten through sixth. As has been acknowledged often by educators, class size can be an excellent indication of the caliber of education.

Statistics cited in the 1971-72 Title I application are even more indicative of the climate of both the schools and the economy of Newark. They show a jobless rate for the previous year of 14 percent, a rate double that needed to qualify under the Economic Development Act. Another 35,000 residents were earning $3,000 per year or less. And in 1971, the Model Cities program in Newark was expanded to include the entire city.

Other data further dramatize the situation in the city. Newark was then second only to Washington, D.C. in percentage of black population (54.2). Another 11 percent of the population was of Hispanic background. The city also had the highest percentage of slum housing in the nation, the highest incidence of crime, and the second highest birthrate.

One other statistic was especially considered by the local administrators and serves to show the inherent unreliability of any count of the city's low-income population. Newark had in 1970-71 the highest population turnover in the nation. Model Cities data indicate that mobility rates reached as high as 80 percent for schools in the Title I area. For this reason alone, LEA had no choice but to assume high concentrations of low-income families in all attendance areas and to attempt to spread the benefits of Title I as broadly as possible to assure that most educationally deprived children would be served. Indeed, the type of Title I project ultimately developed was tailored to such a mobile population.

Then, as now, the city was faced with imminent bankruptcy. The entire school system was overburdened and hardly able to maintain the quality or quantity of services that would ameliorate the learning, health, and nutritional problems of its school children. Schools with relatively less disadvantaged students hardly had more opportunity to satisfy these needs.

It is also apparent that under the meaning of the Act and its scope, which Congress intended to have been broad, the whole of Newark could have been considered a Title I area.

In the 1965 House Committee Report on Public Law 80-10, later to become the Elementary and Secondary Education Act, it was said:

> "Under the terms of the legislation, a local public school district may use funds granted to it for the broad purpose of programs and projects which will meet the educational needs of educationally deprived children in those school attendance areas in the district having high concentrations of children from low-income families. It is the intention of the proposed legislation not to prescribe the specific types of programs or projects that will be required in school districts. Rather, such matters are left to the discretion and judgment of the local public educational agencies since educational needs and requirements for strengthening educational opportunities for educationally deprived elementary and secondary school pupils will vary from State to State and district to district. What may be an acceptable and effective program in a school district serving a rural area may be entirely inappropriate for a school district serving an urban area, and vice versa. *There may be circumstances where a school system is basically a low-income area and the best approach in meeting the needs of educationally deprived children would be to upgrade the regular program.* On the other hand in many areas the needs of educationally deprived children will not be satisfied by such an approach." 1965 U.S. Code Cong. & Admin. News 1454 (emphasis added).

The 1966 House Committee Report on amendments to Title I noted local problems in determining where and how Title I funds should be used in meeting the objectives of the program. The Committee repeated that Title I programs were to be designed at the local level and that the program was to be administered flexibility:

> *"We specifically pointed that there may be circumstances where a whole school system is basically a low-income area and in which the best approach might be to upgrade the whole school system.* The first year programs involving a general upgrading of whole school systems were discouraged by the Office of Education. The construction of facilities to house Title I programs was permitted only sparingly. This restricted approach was necessitated by limited funds. In the next two years, especially in fiscal year 1968, more funds will be available and more children will be included in Title I programs. It is expected that more general upgrading of school systems and more construction will be permitted. *It is the feeling of the committee that when 30 or 40 percent of the children in the district are from low-income families, all of the children in the district could be considered disadvantaged and the whole school system could be upgraded."* 1966 U.S. Code Cong. & Admin. News 3846 (Emphasis added)

As has already been demonstrated, the Newark school system was one uniformly disadvantaged both educationally and economically. In school year 1971-72, AFDC data, which, if anything, understated the level of poverty in the district, showed a low-income percentage of over 33 percent, a level above that recommended by Congress in 1966 as one that should qualify the entire district as disadvantaged. Even the federal regulations applicable

that year, and so often cited in the preliminary and final audits, recognized that an entire school district could be considered a project area:

> ". . . *In certain cases, the whole of a school district may be regarded as an area having a high concentration of* [*children from low-income families*] *and be approved as a project area,* but only if there are no wide variances in the concentrations of such children among the several school attendance areas in the school district." 45 C.F.R. 116.17(d) (emphasis added)

With these regulations and pronouncements before them, Newark school administrators proceeded to try to determine the appropriate target areas. It is apparent that their program as a whole met the Title I requirements in serving educationally deprived children, who were demonstrated to have been both highly concentrated throughout Newark and highly mobile among attendance areas.

In fact, there is every indication that Newark was precisely the kind of school district for which the Act was written. The House Committee Report on the Title I amendments of 1974 notes that two types of districts should especially be the targets for Title I funds: 1) districts which are exerting a great tax effort and have a minimal tax base and 2) districts where education costs more because of expensive programs (such as bilingual programs) or because of student transiency in the district as a whole. Newark certainly qualifies as a district of the first type. Its tax base has been rapidly shrinking, and Newark taxpayers have traditionally been burdened with the State's highest property tax rate. The rate of transiency has already been noted. As for the demands for bilingual education in the district, an informal survey completed in October 1969 showed that 12 out of the city's 29 elementary schools had a non-English speaking population of 14.4 percent or more. Since then, there has been a rapid influx of Spanish speaking people.

All of the foregoing indicates that the Newark program as a whole was clearly designed to serve not the general educational needs of the area, but "the special needs of children from low-income families" and to counteract "the impact the concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs." 20 U.S.C. 241(a). Indeed, no statement made in either the preliminary audit or final determination alleges that these purposes were not served.

One other thread of criticism which runs through the preliminary audit deserves some comment. The auditors repeatedly suggested that although the allegedly improper procedures in Newark ceased after school year 1971-72 and there was every indication that eligibility determinations for 1972-73 were properly made, there was no documentary evidence that this resulted from SEA action. Pronouncements from OE itself give lie to these assertions. In fact, so strenuous were SEA's efforts at compliance during these years that, by 1973, OE could characterize the newly instituted revision and application procedures as "exemplary." *

As early as April 1971, Sidney P. Marland, Jr., then U.S. Commissioner of Education expressed deep appreciation for the conscientious efforts being made by the State to correct deficiencies in the administration of Title I.** By June 7, 1971, SEA could demonstrate that numerous OE suggestions relative to the personnel, evaluation, and regulatory areas had been implemented.*** The process of administrative reorganization was essentially culminated by 1974. In a letter dated June 14th of that year, Richard L. Fairly, Director of OE's Division of Education for the disadvantaged, could report the following programs in these areas:

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* Appendix B, page 1.

** Appendix C, page 2.

*** Appendix D.

1) Fiscal management—the State had instituted satisfactory procedures, all consistent with federal guidelines, to maintain fiscal control and integrity.

2) Monitoring—the process in New Jersey was recognized as well above average.

3) Target area selection—state guidelines were entirely consistent with federal regulations.*

Thus, during the period of the audit, correspondence with OE indicates that SEA efforts at compliance with federal regulatory mandates were consistently praised and that State administrators were led to believe that they had cured all of the alleged insufficiencies. At the same time, OE staff summoned SEA employees to Washington to extract from them admissions that would later be used in the audit. The unfairness in this is evident.

In sum, given SEA administrative budget for these early years and the overwhelming confusion at all levels of regulation, it is hardly surprising that the State was in no position to monitor the implementation of the program in more than 500 school districts and that there may have been violations of a technical nature. The State was hard-pressed and thus forced to rely heavily on project applications, evaluations and periodic visits. With all this, it still must be stressed that the violations cited were only technical ones. That which was done in Newark was entirely consonant with the intent of the drafters of the Act and the spirit of the legislation itself. There are no allegations that economically and educationally deprived children were not served or that monies were diverted for illegal purposes.

The State believes that it has amply demonstrated that the Newark project as a whole met the requirements of Title I and that any further OE action with respect to the program in school years 1970-71 and 1972-73 is im-

* Appendix E, pages 3-5.

proper. However, in view of OE's continued insistence that Newark failed to comply with Title I requirements in those years, each audit exception will be considered individually.

I. REFUNDS REQUESTED AS A RESULT OF PAYMENTS TO ALLEGEDLY INELIGIBLE SCHOOLS (1970-71)

As a result of the audit of documents for the 1970-71 school year, OE requests the return of $91,266 in Title I program funds spent by Lafayette Street School and $41,-021 in expenditures by ten other schools.

Initially, the State asserts that OE is barred from recovery of any expenditures made during the 1970-71 school year should they prove to have been unauthorized. 20 U.S.C. 884 provides:

> "No State or local educational agency shall be liable to refund any payment made to such agency under this Act (including Title I of the Act) which was subsequently determined to be unauthorized by law, if such payment was made more than five years before such agency received final written notice that such payment was unauthorized."

This five-year statute of limitations was adopted to encourage HEW to make audits more promptly than had been the case and to remove the threat on school administrators of liability for payments received many years before.

By "final written notice" is meant the final determination of an intention to collect, communicated by OE to an SEA after its officials have met with HEW to discuss the preliminary audit exceptions. *Report of the House Education & Labor Committee*, Feb. 21, 1974, 1974 U.S. Code Cong. & Admin. News 4060-61.

Final written notice of OE's intention to collect was not received at the New Jersey Department of Education until June 28, 1976. Records in SEA's possession show

that it received final notification of the grant award on November 5, 1970 and that all Title I monies for programs conducted during the 1970-71 school year, which were the subject of the audit exceptions, were paid to the SEA before June 28, 1971 (five years before final written notice). Therefore, OE cannot collect on any alleged unauthorized uses of those fiscal 1970 and 1971 fund paid before the above-named date.

Although, as argued above, the Newark program met Title I requirement and, in any case, monies paid in school year 1970-71 cannot be recovered since the statute of limitations had run before OE's final written notice was received, the propriety of expenditures for the programs of that year will still be considered individually.

EXPENDITURES BY LAFAYETTE STREET SCHOOL

The auditors request a refund in the amount of $91,266 for payments made to Lafayette Street School because of its allegedly improper classification as eligible. Although the reported AFDC low-income percentage in this school's attendance area (23.5%) fell two points below the district-wide average, it was included on the basis of other factors, all of which were cited in LEA's 1970-71 application and all of which could be considered under existing regulations. Chief among these were the poor economic climate in Newark at the time and a large concentration of Hispanic and other non-English speaking minorities in that section of Newark. The inherent unreliability in the use of AFDC data is even more apparent in such an area as the one served by the Lafayette Street School. Many of its residents were ignorant of how to become welfare clients or evidenced resistance to signing up for welfare.

Furthermore, an OE review of SEA administrative techniques was not effected until March 17, 1971 and the report of that review not received until July 27, 1971, one year after SEA's approval of the Newark application. As had already been demonstrated, the SEA response to

that review was exemplary. It resulted in dramatic adjustments in the review procedures. See Appendix B. Certainly neither the State nor the local agency is without fault in this matter, but since the confusion of the 1970-71 school year, efficient methods of administration have been developed and implemented.

EXPENDITURES AT TEN OTHER SCHOOLS

The auditors also requested the return of some $41,201 as a result of payments made to ten schools made to schools allegedly ineligible to receive Title I funds. The State can only reiterate its former response to the conclusions arrived at by the auditors with respect to these schools—that it has not yet been afforded access to the documentation on which the audit was based. New Jersey Department of Education personnel who prepared the December 10, 1974 response and the two staff members who participated in the meeting with OE officials are no longer employed in the State Title I agency. The Department has been prejudiced by OE's failure to supply information and unable to prepare a meaningful response to the conclusions of the auditors.

The State has no way of knowing what transpired at the November 1975 meeting. Failure of SEA employees to request workpapers at that time is hardly a reason for OE to ignore repeated requests to do so since then. Such refusal is patently unfair and demeans the quality of the hearing to which the State is entitled.

II. EXPENDITURES REQUESTED DUE TO ALLEGEDLY ERRONEOUS IDENTIFICATION OF ATTENDANCE AREAS (1971-72)

The auditors first complain that the stated method of identification of eligible attendance areas deviated from the regulatory mandates of 45 C.F.R. 116.17(d). They further note that the AFDC statistics used by the LEA were incomplete in that they failed to take into account

eligible children in non-public or special education schools as well as those who had dropped out of school.

If anything, this last complaint, as the auditors admit, would tend to result in an underestimation of the number of AFDC children in each district. The effect of course is to make each LEA figure not reflective of the true level of poverty in each district so that there may have been excluded from the program several attendance areas which would have otherwise qualified.

The auditors also admit that the method ultimately used by LEA in 1971—a method of ranking attendance areas on the basis of the percentage of the number of children from low-income families actually enrolled in each school—was a reasonable alternative under the circumstances. Even in retrospect, this method seems not only a reasonable alternative, given the admitted inaccuracies in the AFDC account, but the only reliable alternative open to the local agency.

As section 1.1.1 of *ESEA Title I Program Guide # 44* indicates, the process of ranking by percentages is one that is *normally* used. It further states that all districts need not be ranked on the same basis—eligibility of some population areas may be determined on one basis, eligibility of others on another. This is precisely what was done. LEA employed available free lunch/breakfast, housing, health and unemployment statistics in a weighted formula in a manner consistent with the basic criteria set down by the Commissioner.

Furthermore, the auditors' characterizations of SEA's response of May 7, 1976 as an "ex post facto justification" based on the same errors "which gave rise to the initial audit exception" is both inaccurate and unfair. The calculations in the May 7 submission clearly indicated a correlation between the entire eligible school population in any given attendance area and the number of children from low-income families residing within that area. Although that was made clear in the SEA answer,

it bears reiteration now. To take but one example, the equation given for Madison School is as follows:

$$\frac{937}{1544 + (2389 \times .341)} = 39.7\%$$

The numerator comprises the total number of children from low-income families from Madison's attendance area; the denominator, the total of the elementary school enrollment *plus* the number of junior high and high school students which that attendance are contributed (i.e., 34.1% of those schools' total population of 2389). The auditors' recalculation, on the other hand, employed only AFDC data for elementary school children, measuring the number of elementary school pupils in each school against the total population of that school. In this case, it is the auditors who have ignored the directives of their own program guide by not employing a comparison the corresponding student populations of the attendance area as a whole.

Apart from that consideration, the State must point out that OE is, on one hand, condemning SEA for allowing a local agency to employ an allegedly improper ratio while, on the other, demeaning SEA's recalculation as an "ex post facto calculation" even though it is on the basis of the very type of formula OE calls for. That this recalculation comes after the fact renders it no less valid as a justification. The figures inserted into this revised formula were fully as accurate then as they are now. They serve to demonstrate that even though the formula LEA used may not have conformed exactly to existing federal specifications, the result reached was a just one. It was a result that was calculated to—and did—fulfill the purposes of the federal statute. The goals of Title I, as well as instructions on selection of target areas, were set out in the Title I Program Guide:

> "The purpose of the attendance area requirement is to identify the 'target populations' of children who

are to be considered for participation in Title I activities on the basis of educational deficiency and the need for special services."

In the final analysis, these ends were furthered by the ultimate distribution of the funds, whatever the target area selection method originally employed. The State believes that the need for Title I funds in these particular areas of Newark, if not in the city as a whole, has been amply justified by the recalculations submitted on May 7 and by the other factors set out in detail throughout this response.

In retrospect, it is easy to criticize the lack of SEA supervision over local programs five years ago. But such criticism does not take into account inherent monitoring limitations and the personnel shortage existent then. Nor does it consider that, by OE's own admission, the monitoring process has significantly improved since.

CONCLUSION

For all of the substantive and procedural reasons just set forth, the State urges that OE's final audit determination on the Newark Title I project be reviewed and that the audit exceptions sustained by OE be overruled.

APPENDIX A

July 26, 1976

Mr. Robert R. Wheeler
Deputy Commissioner
Office of Education
Department of Health, Education
and Welfare
Washington, D.C. 20202

RE: ACN: 50006-02 (Newark Board of Education, Title I Audit)

Dear Mr. Wheeler:

Your letter dated June 11, 1976 containing the Office of Education's final determination concerning the audit of the Newark Title I programs for the period September 1, 1970 to August 31, 1973 was received by the New Jersey State Department of Education on June 28, 1976. It would be appreciated if you could advise us under what authority your office is requesting payment of funds by this Department, since we have been unable to discover any source of such authority ourselves. In the meantime, we wish to preserve our right to a hearing on the final audit determination. On behalf of this Department, I am hereby requesting a hearing pursuant to 45 CFR 16 *et seq.*, which it is my understanding are the federal rules applicable to such a proceeding.

I am aware that these regulations require that this request be accompanied by a statement of the questions which will be the subject of such a hearing, together with "pertinent fact and reasons." As you know, the New Jersey educational system has been operating under extraordinary pressures for the past few months and particularly in the past weeks because of litigation which resulted in our entire system being virtually closed down on July 1, 1976. While the injunction which resulted in this closing has now been dissolved by the New Jersey

Supreme Court, my staff must give priority both to the problems created by that temporary closing and to implementation of the new Jersey Public School Education Act of 1975 which was delayed by the aforementioned litigation. Therefore, it would be appreciated if this agency could be given some time in which to prepare the appropriate documentation to support our request for a hearing. I should note that we continue to be hampered in this matter by our lack of information about the contents of the reports upon which the Newark audit was based, information which we have requested several times.

Sincerely,

FRED G. BURKE
Commissioner

cc: Jane Sommer, Esq.

FGB/gyc/M-8439

APPENDIX B

[SEAL]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF EDUCATION
Washington, D.C. 20202

Jul. 16, 1973

Mr. Jerome Jones
Office of ESEA, Title I
State Department of Education
Trenton, New Jersey 08625

Dear Mr. Jones:

This letter is a follow-up to the New Jersey Title I program review conducted during the week of March 19-23 by William Johnson, Terry Lynch, Edward Smith and Goldia Hodgdon of my staff. The team held extensive discussions with the Title I staff, reviewed selected documents, visited four local school districts, and had a very instructive experience in observing a SEA Title I team visit to one local district. The purpose of the OE team visit, as you know, was to assess the administration and implementation of the New Jersey Title I program with the intent of arriving at an understanding and making recommendations regarding steps to be taken in further strengthening program operations. We were especially interested in the actions that have been taken by the Department following the OE 1972 program review.

We were very pleased to find that the Department's October 6, 1972 response to our review letter of August 8, 1972 was corroborated in almost all instances by the team's findings at the SEA level during the March visit. It is particularly gratifying to be able to point to several critical areas of responsibility and action on the part

of Department personnel which hold promise for exemplary efforts by the State to provide strong leadership for the local school districts. Among those efforts which should be highlighted are: (1) the addition and reorganization of staff, including the provision of staff development opportunities and development of a management system for accomplishing broad objectives and appropriate tasks; (2) the revision of the *SEA Guidelines for Approval of ESEA Title I Program Application* and revision of the application form itself; (3) the development and employment of a comprehensive procedure for on-site visits and follow-up; (4) the formulation and refinement of SEA policy positions on a task force basis, utilizing and coordinating the expertise and experience available from immediate staff, directors of and specialists from other divisions within the Department, selected local Title I coordinators and parents, to a limited extent. While the team's observations during the March visit are generally reflective of the positive steps taken by the SEA since the previous program review, the remainder of this letter will also include observations, findings, and recommendations given for your consideration and action as indicated.

Financial Management, Auditing and Related Matters

Staff additions and reorganization have contributed to furthering the effectiveness of your accounting, disbursement and other fiscal responsibilities. The Department's goal for Fiscal 1973 to perform in-depth audits of 30 Title I programs with emphasis on the districts receiving the largest allocations represents a considerable increase over the nine districts audited during the previous year. The Department's March orientation session on financial auditing procedures for all staff should enhance the efforts of the two accountant auditors in the Division of Administration and Finance who have had to perform an almost impossible job. The 1972 review team's recommendations regarding the addition of at least one auditing position had not been accomplished at the time of the 1973 review visit.

The team was advised during the exit conference that those school districts receiving less than $4,000 allocation were instructed by the SEA to wait until April to submit applications for the use of their Fiscal 1973 funds. Whether this is new or temporary policy, this Office views such instructions as being discriminatory against those districts which want to use their funds but are not allowed to exercise their right to request them at the same time as all other districts. This situation suggests the need for the SEA to examine its staff functions with a view toward providing the necessary technical assistance which would result in the launching of programs during a given school year, rather than leaving the affected LEAs with the options of an abbreviated program for a few months duration or simply carrying over funds for the succeeding school year. Either option does not adequately address the needs of those identified children in need of services during each regular school year.

There are several other options that may be available to the local school districts in question. The SEA could: a) encourage the development of more cooperative projects, given favorable logistical circumstances; b) encourage the use of services of a part-time reading teacher or a tutorial experience for the children; c) provide for the services of a Department helping teacher on a more sustained basis; d) initiate a specially adapted in-service training experience for the regular classroom teachers and one or two para-professionals who have children who have been identified to be in need of supplementary instructional services; or e) provide for a training program for parents to follow through on (at home) instructional techniques they have observed in the classroom.

The recommendations for financial management and auditing concerns are that:

1. The SEA review its widely distributed publication, "Guidelines for Fiscal Management," issued by the Division of Business and Finance, for the purpose of updating if necessary. The latest copy examined by the review team was revised March 1, 1969.

2. The SEA review its policy on the withholding of allocations under $4,000, and inform this Office of rationale and problems attendant to a continuation of this practice; or inform this Office regarding plans for changing this practice, with a full discussion of rationale and problems.

3. The SEA in its expanded technical assistance activities as they relate to auditing, develop a profile of common categories of exceptions and use this in their overall program development activities with LEAs and for development of State policy as indicated.

SEA Policy Development and Parental Involvement

It is our understanding that the involvement of parents in SEA policy issues relative to Title I is limited to parental participation concerns. Even though we are clearly cognizant of the parameters of the Federal requirements regarding parental involvement at the local school district level, it would appear that New Jersey might take a step forward in providing a model for parental involvement for the locals. Such a step would entail a studied consideration of how the State-wide PAC, assuming that it is duly constituted and representative of the local system-wide parent advisory councils, might be more consistently involved in the Department's discussions leading to development of Title I priority and policy issues. In view of what was reported to be a fine working relationship with an unusually active and supportive state-wide PAC, the problems one might anticipate in such an arrangement could be minimized and the spin-off effect, supported by

appropriate and timely dissemination activities, would serve to motivate those local PACs which are experiencing certain growing pains. We are reminded of your recently published *SEA Guidelines for Approval of ESEA Title I Program Application* which are quite explicit on parental involvement requirements, but at the same time our observations in Perth Amboy and a recent visit from a group of Spanish speaking parents from Newark (communicated under separate cover on June 20, 1973) pointed to local problems in carrying out those requirements. We suggest that your own technical assistance efforts for improving parental involvement at the local level could be augmented by what happens at the SEA level and the kind of commitment demonstrated with the State-wide PAC.

The remaining areas of discussion in this letter, with the exception of the section on local site visits, will be undertaken with the acknowledgment that many of the areas of concern discussed at the exit conference in March have been addressed by the Title I staff since that meeting. Our concerns then included aspects of the following areas:

1. application review and approval process;
2. on-site visit and follow-up procedures;
3. staff development process at the LEA level;
4. SEA policy and instructions regarding Title I equipment inventory and disposition of equipment no longer maintained on inventory;
5. observations at the SEA level.

Application Review and Approval Procedure

Your recently published *Guidelines for Approval of ESEA Title I Program Application, Fiscal Year 1974* (subsequent to the March review) is one of the most complete and explicit documents of its kind that we have

seen. That, along with a similarly comprehensive application form and the application review "worksheets" (to be revised no doubt for Fiscal 1974 application) is responsive to the review team's concerns about adequate treatment of support services appropriate for Title I projects; the assessment of needs in determining program priorities; the process by which participants are to be selected; the requirement of measurable performance objectives for project components; the inclusion of the objectives of the previous year's activities in evaluating the project; and the use of the previous year's interim evaluation data for planning the next year's program. Your guidelines on non-public school involvement, preschool and kindergarten programs, and dissemination activities are likewise responsive.

Our recommendations in this area are that:

1. The SEA conduct task oriented workshops for LEA staffs and PAC groups on the new guidelines and application form. We recognize that a first step taken in this direction was the Cherry Hill conference held in May. There you familiarized a limited audience with program requirements and the application form. While we also recognize that Fiscal Year 1974 applications are due shortly, and that it is probable that some revisions will be made for next year (based on the 1973-74 school year experience), we view the two documents as durable and basic information which should be widely disseminated and understood by all who are involved in the Title I program. We anticipate that needs assessment, participant selection, non-public schools, and parental involvement might be some of the more difficult areas requiring special attention.

2. The application review "worksheet" be updated.

3. The evaluators continue their involvement in the review of new applications from the largest districts, and hold training sessions for Title I staff to deal with the increased emphasis on performance objectives, needs assessment and evaluation.

On-site Visit and Follow-up Procedures

The SEA has established a comprehensive on-site and follow-up procedure consisting of (1) applying a definite rationale (size of allocation, number of deficiencies noted on the application form, complaints) for determining which LEAs are visited on a priority basis, (2) giving special priority to all LEAs with allocations of $500,000 or more, (3) utilizing report forms for monitoring at the central office LEA level and at the local school level, (4) reporting on SEA visits to LEAs within two weeks of the visit with a request that LEA respond within 15 days. The annual monitoring schedule currently calls for 324 visitations. Helping teachers are responsible for visiting smaller LEAs annually; those LEAs under $50,000 probably will be monitored biennially.

The review team's reading of several SEA monitoring reports revealed thoroughness; and observations of the SEA team on-site in one LEA were positive.

Presently, evaluation personnel participate in monitoring visits to the 14 largest districts and a few others. There is no systematic method for choosing which others the evaluators will visit.

We recommend that the SEA should utilize its rationale sheet for determining priorities in working out a visitation schedule for the evaluators.

The SEA practice of sending expanded teams to the 14 largest school districts for three day monitoring visits insures thorough coverage of central office and project activities. While staff might have sufficient time for the identification of compliance problems and, in most instances, technical assistance activities, the SEA could assure itself of the optimum use of staff time during these

visits by developing a more detailed schedule which provides for identification of problems and the giving of technical assistance.

Staff Development at LEA Level

The new State guidelines are clear and strong on this point. As in all other aspects of program administration and implementation at the local level, the SEA should avail itself of frequent opportunities to participate in and/or observe staff development efforts at the local level.

Title I Equipment Inventory and Disposition

The Title I staff has developed a very instructive section in the new State guidelines on the subject of equipment inventory and disposition of equipment at the local level. At the same time, the SEA should be mindful of the fact that it is responsible for knowing the status of equipment and materials purchases both at the SEA and LEA level. We note that the application form does not require LEAs to report what is on hand. Such data would allow the Title I staff to make more valid decisions about additional requests for equipment and materials purchases.

Local Site Visits by OE Team

There are many factors which often contribute to the variance in program compliance and quality as projected by State guidelines and as effectuated at the local level. By the same token, it is often apparent that State leadership contributes to the implementation of good programs at the local level. In each of the four districts visited by the OE team certain positive features were observed. They include:

1. Elizabeth—efforts to implement a program management system;
2. Camden—the aide/paraprofessional/teacher career ladder concept;

3. Vineland—career ladder concept; program management system; summer school program limited to regular school year participants;
4. Perth Amboy—special institute for Spanish-speaking parents.

With the revised State guidelines and other improved SE Administrative practices already referred to at several points in this letter, we look forward to the resolution of several problem areas observed at local project sites.

Among those problem areas for which corrective action is required are:

1. Elizabeth—a) final resolution of the Instructional and Materials Center problem; b) selection of pre-Kindergarten participants on a "first come first serve basis", rather than those participants demonstrating the greatest need.
2. Camden—a) a realistic realignment of and/or reduction in the Title I administrative staff; b) inadequate needs assessment documentation as it relates to all program components and supportive services; c) confusion on the part of some staff (medical) regarding their roles and function; d) correlation between Winston Camp project and instructional activities; e) program design and scheduling resulting in a high frequency of movement by children back and forth to numerous staff during course of a given day. Some teachers have indicated that they do not have children long enough in order for the Galaxy process to be a meaningful reinforcement technique.

3. Vineland—a) vaguely written objectives not well tied into Project Puppies activities; b) Project Puppies aides and Title I aides at the Max Leuchter School not focusing on problems of the most severely disadvantaged children; speech therapist, nurse, attendance worker not focusing on Title I participants; c) Sacred Heart School (non-public) not involved in planning of mathematics and reading projects currently operating in that school. The principal was also uncertain as to the basis on which participants were selected.

4. Perth Amboy—a) informal, non-systematic approach to selecting of program participants (also a problem in Vineland); b) needs assessment founded on survey of teacher opinions and surveys of opinions of others knowledgeable about education problems in LEA. No objective data used since 1971; LEA staff feels that the 1971 test results have been corroborated by subsequent survey findings.

We would appreciate, within 60 days, a written response to this report with clarification on questions raised and comments on any action taken or planned for implementation of our recommendations.

The review team was encouraged by your action to date and look forward to a continuing relationship that will serve the best interests of the educationally deprived children in New Jersey.

Sincerely yours,

/s/ Richard L. Fairley
RICHARD L. FAIRLEY
Director, Division of
Compensatory Education

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Docket No.

Civil Action 80-1991

STATE OF NEW JERSEY, DEPARTMENT OF EDUCATION, PETITIONER

v.

SHIRLEY HUFSTEDLER, SECRETARY OF EDUCATION, UNITED STATES DEPARTMENT OF EDUCATION, RESPONDENT

PETITION FOR REVIEW

The State of New Jersey, Department of Education, hereby petitions the Court for review of the final decision of the Secretary of Education dated May 7, 1980, in the Appeal of the State of New Jersey, Docket No. 14-(29-76, Audit Control No. 50006-02, ordering the State of New Jersey to refund to the Secretary of Education the amount of $1,031,304.00.

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for Petitioner

By /s/ M. Kathleen Duncan
M. KATHLEEN DUNCAN
Deputy Attorney General

Dated: July 3, 1980

[SEAL]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY
Washington, D.C. 20201

March 31, 1978

Office of the
General Counsel

Dr. David S. Pollen, Chairman
Title I Audit Hearing Board
U.S. Office of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Re: Title I Audit Appeal of New Jersey
Docket No. 14-(29)-76
Audit Control No. 50006-02

Dear Dr. Pollen:

Enclosed is a joint "Pre-hearing Memorandum", together with the SEA's statement of factual and legal contentions and the Deputy Commissioner's statement of the issues presented and his position.

This letter clarifies that neither party requests a formal evidentiary hearing, at this time. We believe that all evidence on factual issues can be presented through briefs, documentary evidence and affidavits. However, both parties reserve the right to cross-examine affiants if their statements raise contested issues of fact.

This letter further clarifies that the parties jointly propose the following schedule:

(1) Within 45 days after the Panel issues its order regarding further proceedings the SEA shall file its brief together with all supporting documentary evidence and affidavits.

(2) Within 45 days after receipt of the SEA's brief the Deputy Commissioner shall file its brief together with all supporting documentary evidence and affidavits.

(3) Within 20 days after receipt of the Deputy Commissioner's brief the SEA may file a reply brief.

The New Jersey SEA requests (and we do not oppose this request) that the Panel schedule oral argument at a convenient time following the exchange of briefs.

Mr. Mark Schorr, counsel for the SEA has been informed of and concurs with the clarifications in this letter.

Sincerely,

/s/ Robert J. Arnot
ROBERT J. ARNOT

/s/ Philip H. Rosenfelt
PHILIP H. ROSENFELT
Attorneys for the Deputy Commissioner
for the Bureau of Elementary and
Secondary Education

cc: Mr. Mark Schorr, Esq.

BEFORE TITLE I AUDIT HEARING BOARD
U.S. OFFICE OF EDUCATION
DEPARTMENT OF HEALTH, EDUCATION
& WELFARE

Docket No. 14-(29)-76

APPEAL OF STATE OF NEW JERSEY
TITLE I, ESEA

PRE-HEARING MEMORANDUM

1. HEARING:

Neither party at this time requests a formal evidentiary hearing. In the event that no factual issues arise, the hearing in this matter will be confined to oral argument on the admissibility of documents and the legal issues raised.

In place of a formal evidentiary hearing, SEA will submit an affidavit from one of those who participated in the recalculations which it asserts now show eligibility of the schools declared ineligible by the audit. Counsel for the Deputy Commissioner will be provided with a copy of the affidavit in advance of the date set for argument and reserves the right to cross-examine the affiant if his statement raises contested issues of fact.

The Deputy Commissioner reserves the right to submit an affidavit of an auditor involved in this matter. Counsel for SEA will be provided with a copy of the affidavit in advance of the date set for hearing and reserves the right to cross-examine the affiant if his statement raises contested issues of fact.

2. EXHIBITS:

All other evidence to be offered at the hearing will be documentary in form. The respective parties will confer prior to hearing in order to mark in evidence by consent as many exhibits as possible. Exhibits offered by each party will be appended to its brief.

3. BRIEFS:

SEA's brief will be filed 45 days after the Panel issues its order regarding the hearing in this matter. The Deputy Commissioner's brief will be filed 45 days after receipt of SEA's brief. A reply brief, if one is deemed necessary, will be filed by SEA 20 days after receipt of the Deputy Commissioner's brief. All briefs will be served by certified mail, return receipt requested.

4. OTHER MATTERS AGREED UPON:

The parties have reached a tentative settlement regarding OE's claims for school year 1970-71. When a firm agreement is reached, a stipulation of settlement will be provided to the Panel for its approval.

5. FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES:

See attached memoranda.

/s/ Robert J. ARNOT
Attorney for the
Deputy Commssioner

/s/ Philip H. Rosenfelt
Attorney for the
Deputy Commissioner *
JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for New Jersey Department of Education

By: /s/ Mark Schorr
MARK SCHORR
Deputy Attorney General

* See our attached letter of March 31, 1978 for clarification.

Statement of the Issues Presented and the Deputy Commissioner's Position

1. Whether $91,266 in Title I funds were improperly expended at the Lafayette Street School (which was shown on the Newark LEA's 1970-71 Title I project application as having a low-income percentage below the district-wide average) during the 1970-71 project year?

It is the Deputy Commissioner's position that the Lafayette Street School was, as shown in Newark's 1970-71 project application, an ineligible attendance area and that $91,266 in Title I funds were improperly expended at the Lafayette Street School during the 1970-71 project year. The amount of funds which are recoverable has been substantially reduced by the statute of limitations and the parties have reached a tentative settlement of the Lafayette Street School audit determination.

2. Whether $41,021 in Title I funds were improperly expended at ten Newark schools (which were not listed on the Newark LEAs 1970-71 Title I project application as having low-income percentages below the district-wide average) during the 1970-71 project year?

It is the Deputy Commissioner's position that $41,021 in Title I funds were improperly expended at ten Newark schools during the 1970-71 project year. These ten schools were not listed on the Newark LEA's 1970-71 Title I project application as having low-income percentages below the district-wide average. The amount of funds that are recoverable has been substantially reduced by the statute of limitations and the parties have reached a tentative settlement of the audit determination concerning these ten Newark schools for 1970-71.

3. Whether the Newark LEA's method of computing the low-income percentages, listed in Newark's 1971-72 Title I project application, for school attendance areas complied with the Title I statute and regulations?

It is the Deputy Commissioner's position that Newark's method of computing the low-income percentages clearly violated Title I requirements, in particular the method set forth in 45 CFR 116.17(d) for determining the eligibility of attendance areas. The method used by Newark had basic mathematical flaws which inflated the low-income percentages for individual school attendance areas and thus improperly increased the number of eligible attendance areas.

4. Whether $1,029,630 in Title I funds were improperly expended during the 1971-72 project year at 13 Newark schools which the Newark LEA had incorrectly classified as eligible to receive Title I funds?

It is the position of the Deputy Commissioner that $1,029,630 in Title I funds were improperly expended at 13 ineligible schools during the 1971-72 project year.

5. Whether the recalculation of low-income percentages contained in Mr. Joseph Moore's May 7, 1976 letter to Dr. Richard Fairley (or any other after-the-fact eligibility recalculation) is relevant to this appeal?

It is the Deputy Commissioner's position that the New Jersey SEA, in approving the Newark LEA's 1971-72 Title I project application, violated its assurance to the U.S. Commissioner of Education that it would approve only applications which were in compliance with the Title I statute and regulations. The Newark LEA's 1971-72 application contained computations of eligibility that violated basic Title I requirements. Subsequent eligibility recalculations are not relevant.

6. Assuming *arguendo* that the May 7, 1976 recalculation (or any other after-the-fact eligibilty recalculation) is relevant, does such recalculation comply with the Title I statute and regulation?

As stated in the Deputy Commissioner's June 11, 1976 Final Determination Letter, the May 7, 1976 recalcula-

tion violates Title I requirements and (like the method used in computing the percentages in the 1971-72 project application) improperly inflates the low-income percentages for individual school attendance areas and thus improperly increases the number of eligible attendance areas.

/s/ Philip H. Rosenfelt
PHILIP H. ROSENFELT

/s/ Robert J. Arnot
ROBERT J. ARNOT

Attorneys for the Deputy Commissioner
for the Bureau of Elementary and
Secondary Education

March 31, 1978

SEA'S FACTUAL AND LEGAL CONTENTIONS

1. HEW is without authority to recover Title I monies already expended at the local level. Its sole remedy is prospective and is prescribed by statute witholding of future funds.

2. For the years in question in the instant action, the Newark program in general met the requirements of Title I. In approving the district's applications, SEA properly considered AFDC data and further recognized indices of poverty. The failure of the auditors and the Deputy Commissioner to recognize such reliance militates toward the conclusion that their findings were unjustified.

3. The propriety of SEA's action was also demonstrated, if not by the Newark application, then by recalculations done subsequent to the audit. They showed that the expenditure in schools alleged to be ineligible were in fact proper and in conformance with the applicable Title I regulations. If such recalculations are not considered, the result would be unduly punitive, and those penalized would be precisely the individuals Title I of the Elementary and Secondary Education Act was designed to benefit—disadvantaged children.

4. In the alternative, under any view of the applicable regulations, the whole of the school district could have been considered a Title I project area.

BEFORE TITLE I AUDIT HEARING BOARD
U.S. OFFICE OF EDUCATION
DEPARTMENT OF HEALTH, EDUCATION
& WELFARE

Docket No. 14-(29)-76

APPEAL OF STATE OF NEW JERSEY
TITLE I, ESEA

AFFIDAVIT OF BERNARD J. BRANDWENE

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for New Jersey Department
of Education
State House Annex
Trenton, New Jersey 08625

MARK SCHORR
Deputy Attorney General
Of Counsel and
On the Brief

STATE OF NEW JERSEY)
) ss.
COUNTY OF MERCER)

I, BERNARD J. BRANDWENE, of full age, being duly sworn according to law, upon my oath depose and say:

1. I am currently in the employ of the New Jersey Department of Education. My title is Accountant I. Among my current responsibilities is fiscal program management of ESEA Title I to sub-grantees.

2. I am submitting this affidavit in connection with the appeal of the State of New Jersey, Department of Education, the above-captioned matter.

3. In November 1975, a meeting was held in the office of Mr. Frank Esposito, Federal Programs Director for Newark. I was among those who attended. The others were Frank Esposito, Rudy Jacob, Bob Darden, Sanford Gottlieb and Mel Marech, all of whom were employed in the Newark Federal Programs Office. Also in attendance were Jerome Jones, Ira Helfgott, Bill Franssen, and John Calcerano, all of whom were, as was I, in the employ of the New Jersey State Department of Education.

4. The aforementioned meeting was held to review the material and data involved in an audit exception of $1,029,630 contained in the Report of Audit of Title I of the Elementary and Secondary Education Act of 1965, Audit Control No. 50006-02, which related to the selection of target areas for Newark, New Jersey for the period September 1, 1970 to August 31, 1973. Discussion was limited to Recommendation No. 1 on page 18 of the Report, which was to the effect that $1,167,917 should be returned to the United States Office of Education. It was alleged in the report that that sum was expanded on ineligible attendance areas for school years 1970-71 and 1971-72.

5. As a result of these discussions it was agreed that the source data utilized for total low-income children for

individual attendance areas were incomplete and did not reflect accurately the number of low-income children concentrated in the areas.

6. Although school attendance areas were defined, we determined that the Newark Board of Education's long-standing policy of open enrollment (which meant that some children in a particular area might be attending other schools throughout the city) indicated that a different method of calculating eligibility should have been used. In our estimation, the proper method was one described in Title I ESEA Program Guide #44, furnished to us by the Office of Education, Department of Health, Education and Welfare. Criterion 1.1 of that document, we believed, authorized us to use a system of ranking, and a ratio which considered all school children who resided in a particular attendance area and were enrolled in elementary, junior and senior high schools. A true copy of the relevant excerpts from Program Guide #44 are attached hereto as Exhibit A.

7. AFDC data were utilized in the ratio. The numerator was comprised of the total number of AFDC children from any attendance area enrolled in elementary, junior and senior high schools; the denominator was made up of the total number of children from the area enrolled in elementary, junior and senior high schools. The formula was set up as follows:

$$\frac{\text{"Total number AFDC children in elementary, junior and senior high schools}}{\text{Total students enrolled in elementary, junior and senior high schools."}} = \text{Ratio}$$

8. The actual calculations are shown in Exhibit B, attached hereto. Columns 1, 2, 3 and 5 of Exhibit B are the same figures relied upon by the auditors on page 12 of their aforementioned report. Column 6 is the formula used to determine the number of students from a particular school enrolled in junior and senior high schools. The product of the two numbers in column 6 yielded the

number of students from a particular attendance area in junior and senior high schools. To make an example, according to Newark's statistics, 34.1 percent of the total junior and senior high school populations of schools fed by the Madison School (2389) come from the Madison school's attendance area. The product of those two figures thus demonstrates the number of students from the Madison attendance area enrolled in junior and senior high schools, or 815 (column 7). Adding that total to the total elementary enrollment column's yielded the number of students of all elementary and secondary grades from the Madison attendance area. The number represents the numerator in the above formula.

9. I have also provided data which demonstrates the extraordinary effort exerted by the taxpayers of Newark on account of Newark's meager tax base. Newark is at present, as it was in school year 1971-72, among the most overburdened municipalities in New Jersey. These data are attached hereto as Exhibit C.

/s/ Bernard J. Brandwene
BERNARD J. BRANDWENE

Sworn and subscribed to
before me this 30th day
of May, 1978.

EXHIBIT S-V

BOARD OF EDUCATION
OFFICE OF THE SUPERINTENDENT
NEWARK, NEW JERSEY

FEDERAL ASSISTANCE PROGRAMS
P.L. 89-10 ELEMENTARY AND
SECONDARY EDUCATION ACT OF 1965

TITLE I
APPLICATION FOR
FISCAL YEAR 1971-1972

FRANKLYN TITUS
SUPERINTENDENT OF SCHOOLS

SELECTION OF ATTENDANCE AREAS FOR TITLE I PROJECTS

The attendance areas selected for Title I projects are those areas which, on the basis of the best available information have high concentrations of children from low-income families.

Eligible schools have been listed in order of highest concentration. The criterion used in qualifying schools was based on statistics on Aid for Dependent Children supplied by the Essex County Welfare Board.

Before selecting this method for qualifying attendance areas and schools within those attendance areas the following data were also examined:

- Housing statistics supplied by Applied Urbanetics
- Model Cities Statistics (Entire City of Newark is now a Model Neighborhood)
- Free lunch and free breakfast statistics (32,865 served daily)
- High percentage of Puerto Rican children
- High incident of foreign born and non-English speaking children
- Health Statistics
- Unemployment and Underemployed statistics

It should be noted that in comparing the statistics and projections compiled by Applied Urbanetics and the A.D.C. statistics provided by the Essex County Welfare Board, that each complements (possibly validates) the other.

	Applied Urbanetics	ADC Statistics
Children from low-income families 5-17	33,011	32,352
District Wide Percentage	32.6%	33.9%

The district-wide percentage was determined to be 33.9% of children 5-17 from low-income families. Located in eligible attendance areas are forty-two (42) public elementary schools, fourteen (14) non-public elementary schools, five (5) public junior high schools, six (6) public senior high schools and twelve (12) special education schools. Cleveland Elementary school will not participate in the E.S.E.A. Title I Program because it is endowed by the Chubb Foundation and the project is known as the "Victoria Plan". West Kinney Junior High school will not participate in the E.S.E.A. Title I Program because it receives supplementary funds from the Newark Board of Education and is known as the "Newark Plan".

Thirteenth Avenue school is a new school which will open in September, 1971 and draw its pupils from the Fourteenth Avenue, Fifteenth Avenue, Newton Street and South 8th Street School attendance areas. The percentage of children from low-income families is the average of the percentages of the four eligible attendance areas.

Based on an initial allocation of $7,202,529, it was determined that 23,900 children would participate in the program and receive at least $300 in Title I services and resources as mandated by state guidelines.

The average percentage of 35.7% was applied to the enrollment of each of the eligible public elementary, non-public elementary and special education schools in order to allocate on an equitable basis the number of Title I participating children in each of these schools.

The selected eligible secondary schools show the average percentage of low-income of all of the eligible elementary schools which feed into each of the secondary schools. The selected eligible secondary schools were assigned participating children on the basis of those children previously identified and who received Title I services in these schools in FY 1969, FY 1970, and follow-up services for new entrants who had been identified as Title I participants in the feeding public elementary, non-public elementary and special education schools in FY 1970-1971.

Special Education schools are classified by handicap and therefore draw children from all attendance areas in the city. Participating children were allocated at the same percentage as other schools—35.7% of the enrollment.

Finally, the 23,900 participating children were distributed in the selected schools in eligible attendance areas as follows:

41 Public Elementary	16,639
6 Public Senior High	3,433
4 Public Junior High	1,407
14 Non-public Elementary	1,572
12 Public Special Education	849
TOTAL	23,900

14. List objective data in priority order that was used to validate the identified needs of the educationally deprived children in eligible attendance areas (include both public and non-public school children who reside in the area).

A. THE BASIS

In attempting to determine the basis for priorities, each Title I school developed an on-going process of total involvement. Operating under the leadership of the Project Coordinator and with the approval of the principal, each Local Parent Council, project remedial/developmental teachers, student representatives at the secondary level, and a cross section of the school community defined pupil needs and established priority levels.

Based on the data and information gathered by this assessment group priorities were developed. The emphasis was placed on obtaining optimum academic achievement by each of the participating pupils. This needs assessment procedure carried on in each of the participating schools was directed towards a maximum

involvement of parents of the students for whom the Title I resources are intended.

There has been continuous liaison between the Administrator of the Title I Program and the Office of the Superintendent of Schools, of the Archdiocese of Newark. The Assistant Superintendent of Schools of the Archdiocese is a permanent member of the Central Parent Council.

The same criteria and the same involvement of staff and parents were used in assessing the educational needs of children in the non-public schools as were used in the public schools. Therefore, the needs assessment conducted for the elementary public schools applies to the non-public elementary schools.

Prior to any final decision on priorities, the local schools examined the results of the city-wide testing program administered in October, 1970. Newark's Director of Reference and Research released the following information:

"City-wide test results indicate that most Newark pupils are below the national norm in reading and in arithmetic. An examination of school medians and score ranges at the third, sixth, and seventh grade levels indicates that below-norm scores are generally distributed and are not necessarily confined to any one area of the city.

GRADE 3 ANALYSIS OF TEST RESULTS

Approximately 6,100 pupils were tested in Grade 3. Results of the *Reading Comprehension* (*Sentence and Paragraph*) section of the Metropolitan Reading Test show:

In Grade 3, out of every 100 pupils

18 were at, or above the norm in Reading

82 were below norm.

Of the 82 below norm,

32 were less than 1 year below.

50 were 1 year or more below.

In the 51 elementary schools tests, the Reading Comprehension medians (middle score) indicated

2 schools were at, or above norm.

32 schools were less than 1 year below the norm.

17 schools were 1 year or more below the norm.

The age medians on a city-wide basis were:

7 years 10 months—Mental Age

89—Median IQ

In the 44 elementary schools tested in Grade 6, the Reading Comprehension medians (middle score) indicated

No schools had a median at or above the norm.

2 schools had a median less than 1 year below norm.

42 schools had a median 1 year or more below the norm.

An analysis on a city-wide basis of Chronological Age and Kuhlman-Anderson test results shows for Grade 6

11 years 7 months—Median Chronological Age

10 years 4 months—Median Mental Age

89—Median IQ

GRADE 6 ANALYSIS OF TEST RESULTS

Approximately 5,400 pupils were tested in Grade 6. Results on the *Reading Comprehension* (*Paragraph*

Meaning) section of the Metropolitan Reading Test show:

In Grade 6, of every 100 pupils

8 were at, or above norm.

92 were below the norm

of the 92 below norm,

10 were less than 1 year below.

82 were 1 year or more below.

In 44 elementary schools tested in Grade 6, the Reading Comprehension medians (middle score) indicated

No schools had a median at or above the norm.

2 schools had a median less than 1 year below the norm.

42 schools had a median 1 year or more below the norm.

11 years 7 months—Median Chronological Age

10 years 4 months—Median Mental Age

89—Median IQ

The educational criteria for eligibility for participation in Newark's Title I project are as follows:

a) Poor academic achievement

b) Lack of response to conventional classrom approaches

c) Inadequate performance in communicative skills

d) Socially unacceptable behavior

e) Indifference to responsibility

f) Deficiency in cultural background

g) Physical defects and poor health habits

h) Poor school attendance

The instruments used for determining eligibility for participation were as follows:

a) Test scores (city-wide testing program)

b) Title I standardized reading achievement tests

c) School surveys

d) Guidance records

e) School cumulative record cards

f) Title I cumulative record cards

g) Reading profiles

h) Reading inventories

i) Anecdotal records

j) Health records

k) Dental survey

The existing data on the extent and nature of the health, nutrition and learning problems of the children in the attendance area indicates the following:

In the entire country Newark is second only to Washington, D.C. in the percentage of black population (54.2%). Another 11% of the population is comprised of people from an Hispanic background. Over 11% of the labor force are presently unemployed. 35,000 people are employed either full time or part time at a rate of $3,000 per annum.

Over 30% of Newark's population is receiving some form of public assistance.

Almost 80% of the dwelling units in Newark are at least 40 years old. 30% of the city's housing supply, or about 41,000 units, are clearly substantard.

Newark leads nationally with the highest percentage of slum housing, the highest incidence of crime per 100,000 population, the highest population turnover, the second highest population density, a high rate of maternal mortality, the second highest birth rate, a high rate of veneral disease and the seventh highest confirmed number of narcotic addicts. At present the city faces imminent bankruptcy.

All of these factors contribute to a deleterious effect on the nature of the health, nutrition and learning problems of school children. The already overburdened school system, municipal and state agencies supplying only the most fragmented health services, are overwhelmed with the problem of providing the necessary quantity and quality of services to ameliorate the situation.

Supreme Court of the United States

No. 83-2064

T. H. BELL, SECRETARY OF EDUCATION, PETITIONER

v.

NEW JERSEY

ORDER ALLOWING CERTIRORARI. Filed *October 1, 1984.*

The petition herein for a writ of certiorari to the *United States Court of Appeals for the Third Circuit* is granted.